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Publication

STANDING COMMITTEE ON GOVERNMENT AGENCIES

ORGANIZATION (ontario)

WEDNESDAY, NOVEMBER 25, 1987





Provincial Auditor, you will see that he lists at least three more agencies that have been created.

It was decided there should be a legislative committee dealing exclusively with reviewing agencies. That function fell to the then standing committee on procedural affairs, which is an odd name, because its main function was to review the procedures of the House. But because of member problems--not enough members to go around for all committees--they decided to join those two functions together.

It went that way until 1985-1986, when the Liberal minority government decided to change the standing orders. Part of those changes included the creation of a separate committee dealing exclusively with review of agencies, boards and commissions; hence the creation of the standing committee on government agencies.

That is a brief sketch of the history of the committee.

If you have a copy of the Report on Agencies, Boards and Commissions, Number 13, you will note that appendix A gives you standing order 90(f), which is the terms of reference of the committee. You will see there that the standing committee on government agencies is "empowered to review and report to the House its observations, opinions and recommendations on the operation of all agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the crown in right of Ontario is a majority shareholder, such reviews to be made with a view to reducing possible redundancy and overlapping, improving the accountability of agencies, rationalizing the functions of the agencies, identifying those agencies or parts of agencies which could be subject to sunset provisions, and revising the mandates and roles of agencies."

As you can see, this is a very broad mandate for the committee. The bottom-line recommendation the committee can make is that a certain agency be terminated because it overlaps with something some other agency or ministry does or whatever it may be. At the same time, there may be agencies which, while they may not require termination or sunseting, clearly are in line for various kinds of reviews or improvements in the way they operate. So it is also the power of this committee to make recommendations for changes in the way agencies function and how they operate.

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To find out the listing of agencies, where do we make the determination to choose the agencies that this committee would want to review? Management Board of Cabinet puts out what used to be called the Manual of Administration, now contained in two volumes called Guidelines and Directives. As you can see included here, the Directives portion deals with agencies. These sections of that Directives section of the Management Board's publication include the appointments process, the establishing and scheduling of agencies and the administration of agencies. If you turn to section 6-2, the establishment and scheduling of agencies, you will see that Management Board provides a list of agencies that covers some half dozen or so pages. This is the principal list which members can use to choose the agencies they want to review.

At the same time, you should be aware that the committee has in the past reviewed a number of agencies over the years, at least since 1978, roughly. Again going back to the yellow report, these are contained at the back in appendix C. There you have a list of all the agencies that have been reviewed to date.



Mr. South: Where was that?

Mr. Eichmanis: It is in the yellow report that I think Doug gave you. It is at the back, appendix C.

Mr. Chairman: The back page.

Mr. Eichmanis: I think you have appendix A there.

Mr. South: Right.

Mr. Eichmanis: OK. So those are the ones that have been reviewed to date.

In the past, the members of the committee have in fact chosen to go back to some of the previously reviewed agencies and to try to see what has happened since they made the last set of recommendations. So there have been some agencies reviewed at least twice. But at the same time, if you look at the Management Board list, there are quite a few agencies that have not been reviewed as yet.

I do not know whether I should complicate your life more, but there is another set of documents, and those are two black binders that the Treasurer usually tables once a year. Those two black binders contain all the agencies to which the Lieutenant Governor in Council makes appointments, which is a far more comprehensive list of agencies than is contained in the Directives schedule that you have in front of you.

I think the chairman has suggested that perhaps next week we have a session with Management Board of Cabinet to go into the way it schedules these agencies, why they are scheduled that way, what the basis of that scheduling is and the difference between the listing that is provided here and the larger list that is available through the Treasurer.

If I can just maybe run down the overview of how this process works, there are two processes, essentially. There is the process that operates within Management Board or the government and there is the process that operates within the Legislative Assembly.

Within the government of Ontario, Management Board is largely responsible for the overall co-ordination in providing direction for agencies, and it does this through a number of ways. One is to create this document, which includes, besides these portions, the administration of the whole government of Ontario. As you can see if you peruse these pages from the Management Board Directives, it establishes various concepts and reporting relationships and various actors, if you like, in the process.

Management Board is the overall co-ordinating agency. It is one of the central agencies for the government of Ontario and has broad overall responsibility for ensuring that the various agencies of the government of Ontario comply with the administrative practices and procedures that are set out in the manual--I keep referring to the manual--the Directives.

So these are important documents for your consideration when we are dealing with agencies, because one of the things they establish is the kind of relationships that should exist between an agency and the parent ministry. When we discuss these matters with Management Board, you will see that, depending on which schedule the agency is classified in, whether it is



schedule 1, 2 or 3, it has a slightly different relationship with its parent ministry.

Basically, the difference is the degree to which each agency is at arm's length from the government or from the ministry, to what extent funding comes totally from or through the ministry, to what extent funding is left to the individual agency, the degree to which the agency has to comply with the administrative practices of the government or on which the agencies can do their own thing or set up their own rules and regulations, their hiring policies--whether they have to hire public servants who would come under the Public Service Act or whether they can hire on their own--and so on. Those various kinds of relationships are detailed in the various schedules. When I make my reports I will be referring to those matters in my reports.

That, in brief, is the kind of thing Management Board does within government with respect to agencies. I should mention one other thing. All advisory agencies and all agencies of whatever kind, operational or regulatory agencies, that have been created since 1980 now have a sunset provision in them, and they usually have a three-year or five-year sunset provision. That is, they are not created to exist for ever, if you like.

By and large, they are created now to exist for a set period of time, and once that time period is up, they have to go before Management Board and justify their continued existence. They then receive a thorough review by Management Board to see whether they should exist into the future. So that is roughly the kind of thing that Management Board does within government.

Now, if you look at what we do on the legislative side, as I mentioned, there are few opportunities for members to have a thorough and comprehensive look at the various agencies, boards and commissions of the Ontario government. The estimates process, by and large, is inadequate to the task. The estimates process deals mostly with the ministry. Again, if you read the Provincial Auditor's report, there are various problems involved with the estimates process in the Ontario Legislature. The reviews that agencies get at the estimates level are fairly superficial. In some cases, they are never reviewed at all at the estimates level. So that is a route that is inadequate to the task of dealing with agencies.

The Provincial Auditor has a responsibility for auditing various agencies, and those are listed in the back of the auditor's report. His report goes to the public accounts committee, and the committee can exercise its right to look at the various agencies that the auditor has reported on in his report. But again, the focus of the Provincial Auditor and of the public accounts committee is on financial accountability; it centres in on financial aspects, the things that went wrong that we heard about yesterday with the Liquor Control Board of Ontario, for example.

That focus is much narrower than the focus this committee takes. We go beyond the financial accountability aspects, although we can look at those, and I certainly include anything the Provincial Auditor has said in the report that I prepared for you. But it goes beyond that to include other matters, operational matters that have nothing to do necessarily with financial aspects of the agency.

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We can look at the accountability relationships. One of the things that is required by most agencies now is a memorandum of understanding, which is



becoming more of a quasi-legal document that is signed between the agency and the parent ministry. This memorandum of understanding establishes what the mutual responsibilities and obligations of both the ministry and agency are to one another in terms of reporting, in terms of what kinds of services the ministry will provide, what kinds of things the agency is obliged to provide or to give to the ministry in terms of its decision-making processes. Those memoranda are key aspects of the review of this committee.

Other aspects include anything from personnel matters to operational aspects, the way the thing is structured, whether some aspects of the agency are still operating efficiently or whether some aspects are not. All these matters are within the purview of this committee to look at, to review and to make recommendations on. So it has a much broader mandate than the standing committee on public accounts.

In effect, this is the only committee of the Ontario Legislature that does in-depth, comprehensive studies of the agencies of the Ontario government. By and large, it would be fair to say the committee has adopted a nonpartisan approach to the study of the various issues in various agencies, although obviously there would be different points of view on the working of agencies and so on. By and large, the committee has adopted a nonpartisan approach to that task of reviewing agencies.

I think that is about it, unless there are any questions. Is that more or less clear, or have I confused you?

Mr. Chairman: I think you have got them totally confused. That is sometimes the way to start off.

I believe we have set up a tentative date of December 2 for a briefing by Management Board; however, that has not been confirmed yet. I suggest you keep the Wednesday morning open, and if we do get a confirmation of it, we will send you a notice. It may have to be put off until December 9.

You will notice in the material you got there are several commissions and boards that have not been dealt with or looked at yet, and it would be nice if you would peruse them and maybe indicate the ones you would like to see done. What the committee has done in the past is that each member has picked out one. During the course of the year, you can do only about six to eight or maybe 10--

Mr. Eichmanis: Five or six.

Mr. Chairman: It is difficult when you have two weeks in the spring and maybe two weeks in the fall to do it. Take the list and go over it; there may be something there that would interest you and which you would like to see reviewed.

Mr. Black: I have just a couple of questions, if I may. Have there ever been any criteria set that have helped determine which agencies would be reviewed as opposed to just individual members expressing a preference?

Mr. Chairman: I do not think any criteria have been used. I think it has been what the members felt was interesting. There could be one that your party is interested in looking at. There are no criteria set as such.

Mr. Eichmanis: Excuse me, Mr. Chairman. In the past, as well, the other option has been that the members have said to staff, "You go off and



provide a list of 20 possible agencies on the basis of looking at the agencies that have been looked at previously and whatever knowledge the staff has of the various agencies." Then the staff will provide you with the 20, from which you would choose the appropriate number.

The other option is to literally have all the members pick one each.

To help you, it may be that some members have heard from their constituents, around the building, or whatever, that there is a problem with a given agency. You may have a particular interest in a policy area, whether it is farming or some other area, and there are agencies in a particular category or ministry that you may be interested in. It is really up to you to decide.

Mr. Runciman: I have just been looking at the proposed schedule. I guess it is not your intention to start dealing with any commissions prior to the break.

Mr. Chairman: By the time we get the ones picked out, this session will be over. Then the researcher can go and do his work, and we can ask for a time, probably during the recess of the House, to sit and do a couple of weeks' work on it.

Mr. Eichmanis: If I may, it would be really helpful for me if I had a lead time, because I try to do as comprehensive a review of the agency as possible. Depending on the size of the agency, usually I have very thick material that I have to read and go through. It includes everything from annual reports to memoranda of understanding, whether there have been any debates or reviews by any other committee or government and so on.

There is a lot of material I have to go through. So a lead time of several months would be really helpful for me. It would mean I could do a better job for you. If you were to pick agencies before the House rose on December 17 and there were a two-week period set aside, say, in late February or early March some time, if we knew when the House was to resume, that would be really helpful for me to prepare all that background information for you.

Mr. Runciman: How many can you realistically deal with in a two-week period?

Mr. Chairman: It depends on what they are.

Mr. Eichmanis: Some agencies may not take any more than a morning, if they are really small. If it is just some small review board that meets three or four times a year, you may not want to spend more than a couple of hours on it. If you were to deal with the Ontario Securities Commission, for example, I do not think you could do it in a morning; you would have trouble doing it in a week even.

It depends on how many you pick, what kind they are, how big they are, how involved the legislation is and the kinds of things they do. It is variable.

Mr. Dietsch: Part of my question has been answered, but you were talking about needing a two-week period. Are you talking about meeting when the House is in session?

Interjection.

Mr. Dietsch: So when it is out of session, but on a daily basis for a two-week period of time?



Mr. Chairman: That is the usual procedure.

There are a lot of new members on the committee. If we are going to be up until March, maybe there could be some time in there, maybe a week, when we could take your direction and visit some other jurisdictions that do this type of thing. For the new members, it would certainly give them some insight into how it operates. I am sure members would be interested in that. Maybe there are some other jurisdictions that do this type of thing.

Mr. Eichmanis: As you know, the phenomenon of agencies, boards and commissions is a worldwide phenomenon. All governments in this day and age have resorted to the use of agencies, boards and commissions to do various kinds of public business. There is not a government in the western world that does not use agencies, boards and commissions, so that certainly is a possibility.

Mr. Breaugh: I was going to make a couple of suggestions for you to think about.

One of the things I have always adhered to is the idea that we should not always be reinventing the wheel and working in complete isolation. There are other Canadian jurisdictions, and certainly a lot of American states, that do a regular review of agencies in a much more direct way than we do. One of the things I would like to propose that the committee consider is to do just that: As a regular part of what this committee does, it tries to make connections with other parliamentary groups and political entities that are doing the same kind of thing, so we get some understanding of what the options are.

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We have fallen into a pattern of doing the review, which is sometimes pretty superficial just because you cannot do it in any other way. Very often, there is kind of a paper chase for a while, then the committee invites them in, you have a little chat with them, and you write a little report about them. But there is not a great deal in the way of follow-up, although we have always asked the ministries to respond, and they have been fairly good at doing that.

I would like the committee to consider the idea of working with other jurisdictions to see how they go through this process and trying to establish some connections; it may be just be getting their information or how they prepare their reports, but I think that would be a useful exercise.

The second thing I would like you to consider a little bit is the idea of striking a little steering committee that would allow us to make our choices in a little more organized way. When my committee used to do this, we said: "Everybody go through the list and pick one or two that you would like. We will put them on the table and then we will see how many we can agree on." We would come up with six or eight agencies that would get a review.

Because the review period may be a little limited--it may be confined to only two or three weeks--what that really means is that you might review one of the major agencies in one or two days, and then you wind up with a bunch of little ones that get half a day apiece. I tend to think a steering committee might organize that a little bit differently.

One of the other things that I found was very useful was to actually go and see the agency in operation. Some of them are not agencies that actually



run things. But it is absolutely amazing to go out and see the number of things that are in operation in Ontario run by an agency of the government that none of us has ever heard of.

One part of reviewing the operation of an agency is to see what it actually does. If you have not been to the stockyard in the west end of Toronto and have some idea of the unusual concept of a stockyard in the middle of a big city, with cows wandering across Keele Street, you do not quite understand what they are working with up there.

I would like you to consider dealing with other jurisdictions in a regular, organized manner, and the use of a steering committee to try to make our selection process perhaps a little more coherent than it has been.

The other point that we found kind of useful was that it is hard to do a review of an agency in the way of having a public hearing, having committee discussion and then drafting a report. What we wound up doing a lot of, for example, was to ask John Eichmanis to come in before the hearings and do a little briefing session on who would be reviewed and what he found out about them, having the hearing and then having a little session where we gave Mr. Eichmanis some direction on what areas we wanted to explore in our report, some indication of what the recommendations might be--that kind of thing. The staging and scheduling of the hearings is something we should also consider.

I think it would be nice to have a couple of weeks to do some of that. It might be useful to strike the steering committee today, if that meets with the approval of the committee, and perhaps, after the briefing by the Management Board of Cabinet people, having a recommendation to make to the whole committee by the December 9 meeting.

Mr. Chairman: Excellent idea, Mr. Breaugh. I agree with what you would like to see the committee do. I think it is great.

Mr. Black: Just in support of what has been suggested, I would also like to suggest that whatever reviews we do should be more in-depth than superficial. I would prefer that we do a limited number and do them well rather than just go through the sham of pretending to review a number of agencies which amounts to nothing more than sitting here for three or four hours and hearing someone report it.

If we going to do something, let us do it thoroughly and let us do it well and perhaps limit the number if that becomes necessary.

Mr. Chairman: Of course, we have always tried to do that; however, it always does not happen. That was always our aim: to make sure that the ones we did were done very thoroughly.

With regard to the steering committee, other committees have them. What they usually do is have three people, one from each party, who get together and determine if there is some problem and resolve it. I agree with the idea of a steering committee. If you want to appoint one from your party, one from ours and one from the New Democratic Party, that would be fine.

Mr. South, who would you suggest? Yourself?

Mr. South: Yes. I would be pleased to be on the steering committee.

Mr. Chairman: And Mr. Breaugh from the NDP and Mr. Jackson from the Progressive Conservative Party? OK. That will be the steering committee. If



there are any logjams, they should be able to make sure they get through them.

I wonder if the researcher could start to do some investigation now on some of the comments that Mr. Breaugh made at the beginning of the meeting with regard to other jurisdictions and perhaps bring back a report on that at a later date.

Mr. Black: Could I make one other suggestion for the consideration of the group and perhaps the steering committee?

In considering agencies that might possibly be reviewed, I suggest we give some thought to establishing some criteria by which we are going to make that determination. In other words, there may be agencies which are currently in the political limelight or in the public eye for one reason or another. There may be agencies that have been identified in the auditor's report that warrant some closer examination.

Rather than just saying, "I would like to do that one, because that is my interest," I would like to see some kind of systematic review of agencies that might be considered. Perhaps the steering committee could do that job for us.

Mr. Chairman: In terms of the steering committee, I would like to have a resolution that Mr. South, Mr. Breaugh and Mr. Jackson be the steering committee.

Mr. Breaugh moves that a steering committee be struck consisting of Mr. South, Mr. Jackson and Mr. Breaugh.

Motion agreed to.

Mr. South: On Mr. Eichmanis's assignment to review those political jurisdictions that are doing this, I would think one of the main things he would be doing is getting the names of contact people.

Mr. Eichmanis: I had occasion this morning to meet the delegation that is attending the Commonwealth Parliamentary Association conference from the Northwest Territories. I was surprised to learn that Legislature has just created a committee on agencies, boards and commissions.

Mr. Jackson: They may want to travel here and visit us.

Mr. Eichmanis: I simply gave you that information.

Mr. Chairman: Is there anything further to add to the meeting? If not, we will adjourn and come back here next week, provided that we can get the people from Management Board.

Mr. Dietsch: Could I ask for a point of clarification? Just from a new member's perspective, it seems like everybody in here works for the CNR. I am just wondering if what exactly happens in terms of the steering committee that was just structured is that it would come back to this committee with a recommendation in terms of parameters for reviewing committees, or would it come back here with actual recommendations to review certain committees? Is that what is going to happen?

Mr. Chairman: I will tell you how it will work. If we sat here and came up with about 12 agencies and we could not determine really which ones,



we would say to the steering committee, "You determine it and report back to us."

Mr. Dietsch: What about the committee that I may want to see reviewed? Where does that fall between the cracks?

Mr. Chairman: You make sure that your member knows about that, and he will certainly bring that up in the steering committee meeting.

Mr. Jackson: Basically it is to help problem solve so we do not have to do it during committee time.

Mr. Dietsch: I appreciate that.

Mr. Jackson: Each steering member can caucus his own caucus in terms of the areas of priority, either personally or for his caucus. Also, occasionally we have conflicts with our agendas; sometimes we have delegations, we do not make our deadline and they make appeals to individual members. Therefore, the steering committee becomes a problem-solving group. We can take it to the steering committee. Instead of arguing it out here during valuable committee time whether a specific group should or should not be now allowed to come forward and be heard, we usually just get on the phone and clear the matter up by mutual agreement.

Think of the steering committees more in terms of a problem-solving mechanism so that we do not do a lot of extra committee work which would be unnecessary. That is really how they have evolved around here.

Mr. Chairman: OK. The clerk will try to confirm the Management Report of Cabinet for next week. Notices will be sent to you if that can be done. If not, we will notify you at the next meeting, perhaps on December 9. We would hope to have some selection process under way by that time.

The committee adjourned at 11:50 a.m.



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMMITTEE BRIEFING

WEDNESDAY, DECEMBER 9, 1987





STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Also taking part: "

MacDonald, Keith (Prince Edward-Lennox L)

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Management Board of Cabinet:

Alfieri, Domenic, Executive Co-ordinator, Management Policy Division

Gardiner, Barry, Director, Policy Development and Administration

Tilford, Karen, Management Board Officer, Management Policy Division



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, December 9, 1987

The committee met at 10:09 a.m. in room 228.

COMMITTEE BRIEFING

Mr. Chairman: I call the meeting to order. We will try to get a couple of more members rounded up. If they are not here, they will read it in Hansard anyway. We usually try to have one member from each party represented when we start, but today I would like to proceed. We have a delegation here from the Management Board of Cabinet, management policy division, with Barry Gardiner, Domenic Alfieri and Karen Tilford. I presume one of you will be the spokesman. Perhaps I can turn it over to you and you can proceed now with your presentation.

Mr. Alfieri: Thanks for your invitation. It is a pleasure for us to be here and to discuss the directives and policy guidelines in respect of the agencies, boards and commissions. The way we suggest you proceed is that we make a short presentation about our role and the purpose and function of the directives and guidelines, after which we can have a general discussion. We will be happy to answer any questions you may have. I would like to ask Barry Gardiner to proceed with the presentation.

Mr. Gardiner: I understand that each member has a copy of the presentation. We have also provided each member with an updated list, as of November 20 of this year, of the agencies, boards and commissions by ministry that the Management Board schedules. As well, I think the members will find very useful our manager's guide on the establishment of agencies. This is a companion piece to our directives.

The issues we would like to discuss with you initially--we are hoping that in this presentation we will probably be able to address a number of questions that have been raised by Mr. Eichmanis in his memorandum to you--the definition of "agencies" used by the Management Board secretariat. On the establishment of agencies, we will talk about the categorization of agencies by function and by the schedules and we will say something about the principles and mandatory requirements in establishing agencies, as set out in our directives.

Also, with respect to the administration of agencies, we will say something about the principles and some of the mandatory requirements, such as the memorandum of understanding, corporate plans and sunset review, and end with a list of the number of agencies by function and schedule by ministries.

Just to remind the members of the committee, the Management Board of Cabinet performs the overall general management function for the Ontario government. The board is the agent of cabinet which is responsible for, first, ensuring that the government's programs are managed appropriately; second, controlling government expenditures; third, fulfilling the role of employer for the government; and fourth, establishing the overall management, technological and administrative policies for the government. It is in this latter role that we find the directives and the directives manual, which we have right here,



which set out the policies on a number of administrative issues including the establishment and administration of agencies.

The Management Board definition of agency--again, we are using a definition for administrative purposes--is an organization with ongoing responsibilities which is formally established by legislation, regulation or order in council, and to which a majority of members are appointed by government, or it is a corporation where the government holds more than 50 per cent of the shares and/or appoints a majority of the members.

An agency will have one of the following prime functions. It can either be an advisory agency, an operational agency or a regulatory agency. If it is advisory, there is provision of information to assist in the policy development or program delivery of the ministry. If it is operational, there will be direct provision of goods and services to implement any approved policy or program of that particular ministry. If it is regulatory, it will have a control, a licence review or some kind of an appeal function, as authorized specifically by the legislation which establishes the agency.

With regard to the establishment of agencies, Management Board approval is required initially for the establishment of all new agencies, including any subsidiaries of agencies; the assignment of an agency to a schedule--we will say more about these schedules in a minute--for financial and administrative purposes; and the establishment, as may be appropriate, of a date for a sunset review.

On our Management Board directives on the establishment of agencies, the purpose here is to provide a framework for the establishment and the administration of agencies and for their assignment to a particular schedule for financial and administrative purposes.

As well as the function, each ministry will be assigned a schedule, either schedule I, schedule II or schedule III. Schedule I agencies are the ones closest to government, schedule II being a little further removed and schedule III yet a little further removed.

If we can deal with the characteristics of a schedule I agency, it can be an advisory agency, an operational agency or a regulatory agency, any of the three. It would receive its funding from the consolidated revenue fund or from any money that might be collected from the public by means of levies, in particular with regard to an operational agency.

Its staff is appointed under the Public Service Act. In other words, the staff are civil servants of that agency and they adhere to all the administrative policies of Management Board. They adhere to the directives that are in our directives manuals and to which all ministries must adhere. Any support staff would normally be provided by the responsible ministry; that is, support staff in the sense of financial, auditing and personnel services would be provided by the parent ministry.

Schedule II agencies are only operational and they are normally of a business or commercial orientation. They provide goods and services, normally in competition with or instead of the private sector. They are self-funding. They generate their own revenues as a rule, although in some instances there may be some startup money initially provided by the government. They are administratively independent. In other words, they set their own administrative policies and they would appoint their staff under their own



act; that is, the staff of schedule II agencies are not civil servants. Normally, it is determined that the kind of skills needed are more entrepreneurial in nature.

Schedule III agencies are also operational only. They are the social, cultural or nonprofit agencies. They may receive some consolidated revenue funding, but again a lot of their funding would be collected from the public by means of levies. They, again, are administratively independent. They would generally set their own administrative rules and would appoint their own staff. Their staff are not civil servants either. It is normally felt that there is some specialized expertise usually required of these agencies that is not necessarily found in civil servants.

Mr. Jackson: I have the page open to which Mr. Gardiner is referring. Could he give us a good example of each of the schedule I, II and III agencies. Having given the background, this could be helpful: One example of a schedule I, II and III, so that it is a little clearer in my mind.

Mr. Chairman: I think, Mr. Jackson, we want to have the presentation and then these questions would be asked after he has done his presentation. This was something I had in mind too, asking him to define schedules I, II and III, but I want to let him finish his presentation first.

Mr. Jackson: I know Barry would not mind if I interrupted.

Mr. Gardiner: Actually, in the presentation, I will refer a bit later on to some of the agencies specifically, so perhaps that will come out in the presentation.

Mr. Chairman: You should complete your presentation.

Mr. Gardiner: For the benefit of the members, I have provided a chart which I will not go into today. It is a comparison of the schedules. On the left-hand side, as you can see, we have identified the characteristics by the types of agencies included, where they receive their funding, staffing, administrative support and reporting relationships. That goes into a little more detail than I have done with respect to a comparison.

Each of our directives in our directives manual is set up in such a way that we define a number of principles with respect to the administrative policy. We then set out a number of mandatory requirements and we try to be as limited as we need to be corporately in setting out these mandatory requirements. Then the directives go and talk about the responsibilities. It is really clear in our directives who is responsible for what function.

With respect to the establishment of agencies, when a ministry makes a request to Management Board, there must be a justifiable need for agency status. In that regard, we have three criteria we use. They must have independence in decision-making. In this instance, it can be a control function such as that of the Ontario Securities Commission. It can be a licence review function such as the Liquor Control Board of Ontario. It can hear appeals from either government or third-party decisions such as the Ontario Municipal Board.

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It may need, as a second criterion, some operational flexibility. Examples would be the Ontario Development Corp., the Northern Ontario



Development Corp., the Eastern Ontario Development Corp., the Ontario Lottery Corp., and the Niagara Parks Commission. Operationally they need some flexibility, but administratively and financially they may still have to follow the policies of the government. The third criterion is some involvement of the public, either interest groups or specialized expertise. I am thinking here of the advisory agencies giving specific advice to a minister on the type of policies and programs that are carried out.

We would always consider modifying an existing agency before creating a new one, so we would look at the ministry's agencies before we would set up another one and say, "Can this particular rationale or function be incorporated in an existing agency?" An element of government control would be required, either through a majority appointment or through the ownership I mentioned earlier.

Normally when the government is perceived to be ultimately responsible for the activities of an organization, it should appoint all or a majority of the board. In some instances, only government involvement is required as opposed to control, and in that case the government may just appoint one member to a board, such as the conservation authorities or some professional self-regulating bodies such as the College of Physicians and Surgeons of Ontario. In those cases, where there may only be one or two members and not a majority, we do not schedule those. We do not list those agencies.

There is a note on that page that funding alone does not affect the status. Just because they are receiving financial assistance from the government does not mean they are automatically an agency for our purposes. There are many transfer payment recipients in addition to agencies. I make the distinction here that if control is required, then an agency status is appropriate, but if the prime responsibility for the function really does not lie with the government, then transfer payment recipient is quite adequate.

Here are some of the directives' mandatory requirements in order to use the corporate form. We would want to be assured there is statutory authority for the agency. Normally, with any regulatory or large operating agency, we would insist that the mandate or the authority be in legislation. It may be quite appropriate for an advisory agency to be established either by regulation or order in council. Many of you may be aware that in some ministry acts, there is a general provision that allows the minister to set up advisory bodies as may be required. In those instances, if that is the statutory authority, those agencies could only be advisory. They could not handle money and that sort of thing. They would be fairly limited.

The mandate would have to be clearly established. We would want to make sure we knew the role, powers and duties of the agency. If there were any subsidiaries, they would have to be within the mandate of the parent; that is, their powers could not be greater than the parent's.

When the corporate form is used, it must be justified. Generally, only if the agency is undertaking a commercial or quasi-commercial activity, would the corporate form be appropriate, or if it needed the legal powers of a corporation, would we be encouraging the establishment of a corporation.

The report that is made to the board would justify the rationale for the mandate. It would tell us what the administrative and financial arrangements were to be. It would tell us the staffing, whether they were going to be civil servants or whether they were going to be allowed to hire their own staff. We would want to be aware of the auditing arrangements. As for accountability



relationships, we would want to know something about the responsibilities and reporting relationships of the minister, the head of the agency, the chief executive officer, the deputy minister. We would want to have something said about the agency management board, such as its size, composition and the rates of remuneration that are proposed to be paid.

Once we have the agency established, turning to the administration of those agencies, Management Board approval is required in a number of instances. First, it is required for all memoranda of understanding and exemptions to the requirement for a memorandum. A number of operational agencies will prepare some corporate plans. The Management Board would be interested, as would Treasury, if there were financial implications in those plans. That would be the only time they would come to the board.

If there are any exemptions to the staffing provisions as set out in the directive, that is, if a schedule I agency which normally would have civil servants as its staff for some reason wanted to hire its own staff, then the Management Board would have to specifically approve that change in the provision.

Finally, it would have to approve all sunset reviews and exemptions to the sunset review process. In some instances, agencies are established with a short-term mandate, and a termination date may be included in the constituting instrument, perhaps in the legislation or the order in council. In those instances, it is not necessary to specify a sunset review.

In the directive principles for administration, we want to make sure that agencies conduct themselves according to Ontario government management principles. I have listed some of the principles here: Obviously, high-quality service to the public; accountability of both the board and the staff--in other words, their actions should bear the test of public scrutiny; excellence in management--processes that they use should be focused on results, accountability and responsive decision-making; wise use of public funds; fairness in the marketplace, by which we mean fair access and treatment of all those who do business with the government.

Again, as a principle, we want to have specific financial and administrative arrangements established and we note that a successful ministry/agency relationship is dependent on a clear understanding of the responsibilities of all parties.

Let us turn now to the memorandum of understanding. It is really the key document in which an agency's and ministry's roles, responsibilities and relationships can be specified and various administrative procedures can be defined.

All operational agencies and designated advisory and regulatory agencies require a memorandum of understanding. What I mean by "designated advisory and regulatory" is, if any of the characteristics of those agencies are going to be different, such as the staffing--if a schedule I agency is going to appoint its own staff--then we would want to see a memorandum of understanding that set out just what the relationship was and what the requirements were.

The memorandum of understanding includes information on the roles and responsibilities of all the members of the agency, such as the head and the chief executive officer. The financial and administrative arrangements are specified there. The application of the Management Board directives, in instances where there was going to be some variation, are set out. Reporting



and review requirements and auditing arrangements are all be included within that document.

Sometimes, when the information is covered in the constituting instrument, perhaps in the legislation or the order in council, the Management Board may waive the requirement for a memorandum of understanding. A memorandum usually covers about a five-year period.

With respect to corporate plans, what we are talking about here is a three- to five-year plan which is prepared annually and, as you might expect, deals with strategic directions and performance, assumptions or public policy objectives that the corporation was trying to achieve, major capital and operating expenditures that it foresaw, commitments that it was going to be making, finances that were required and the necessity of structural changes down the way. These things would be noted.

The plan is required of all schedule II operating agencies. It is prepared by the agency itself and sent for approval to the minister responsible for the agency. When there are any financial implications, it would also be sent to Management Board and to the Treasurer and Minister of Economics.

Sunset reviews are undertaken by the agency's responsible ministry. The agency itself does not do the sunset review. It is the ministry responsible for the agency that might do the review, in conjunction, in some cases, with the agency staff. The intent is to make recommendations on, first, whether the agency's functions should be continued, but that is not all. That is not necessarily the prime purpose.

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We also want them in the sunset reviews to talk about any changes that might be required in the mandate of the agency or its structure, operations or reporting relationships that they have seen over the past few years. Such reviews should address functions that obviously should be amalgamated within the responsible ministry, privatized or terminated. Initially, a sunset review would be established for a three-year period and then, once it is established, it could be renewed for a further three- to five-year period.

All advisory agencies and operational agencies that do not prepare corporate plans are required to have a sunset review. Regulatory agencies are reviewed at the time legislation is changed, and Management Board and cabinet approval is required for ministry recommendations. Normally, the sunset review will end with some recommendations. The ministry will recommend to the Management Board that either the agency be continued or certain changes be made.

Finally, I have a couple of notes on other administrative arrangements with regard to audit. An audit appropriate to the agency must be performed on a periodic basis. With schedule I agencies, which are the agencies that receive consolidated revenue funding and are closest to government, we suggest that the internal audit should be done by the ministry audit people. Schedule II or schedule III agencies, we suggest, have a number of choices. They can have the ministry do the audit, if they are big enough they may have their own audit staff or they might want to hire a third-party private sector auditor.

We are also suggesting that an independent audit be conducted from time to time by the Provincial Auditor or a private sector auditor. Again, the



distinction here is that schedule I agencies or agencies that are receiving a significant amount of money from the consolidated revenue fund really should be audited by the Provincial Auditor. Other schedules that do not receive funding or receive as much as 50 per cent could be done by external auditors.

With regard to reporting requirements, normally there is an annual report that is prepared by the agency to the minister. There would be perhaps a number of financial reports for those who are receiving CRF funding.

On the final page we have given you a list, ministry by ministry, of the total number of agencies as of November 20, 1987. The total at the bottom for our purposes is 248 agencies. By type, we have 85 advisory, 72 operational and 91 regulatory. By schedule, you can see by far the largest number of agencies, 203, are in the schedule I category, with 20 being schedule II and 25 schedule III.

That ends my remarks.

Mr. Chairman: Mr. Gardiner, would you clarify schedules I, II and III, indicating their policy, whether there are civil servants on the board or appointees.

Mr. Gardiner: Surely. Under schedule I, the staff consists of civil servants hired under the Public Service Act. Under schedule II and schedule III, members of the staff are appointed by their own act and they are not public servants.

Mr. Chairman: Thank you. Are there any questions?

Mr. Black: Can you give me a couple of examples of agencies we would recognize in each of schedules I, II and III?

Mr. Alfieri: An example of schedule I would be the Social Assistance Review Board which hears appeals on decisions made in respect of applicants for general welfare assistance or family benefits. Schedule II would be the Liquor Control Board of Ontario. Schedule III would be either the Royal Ontario Museum or the Art Gallery of Ontario.

Mr. Jackson: Are you familiar with the LCBO? I thought there was a subtle message in there somewhere.

Mr. Black: Perhaps another committee meeting.

Mr. Jackson: There is a presumption that we would know the LCBO for some reason.

Mr. Alfieri: The LCBO would be a schedule II agency.

Mr. Dietsch: When we are looking at agencies and boards, how does that fall into relationship with the program itself? Is that subject to our review as well? For example, the Ontario Food Terminal Board, I assume, controls the Ontario Food Terminal. In terms of us looking at the operation of that area, we would have to look at the Ontario Food Terminal per se. Does that then allow us to make recommendations for the improvement of that system? Is that what you would do, make them to the board? Is that how it would operate?

Mr. Chairman: We make a report here to the House.



Mr. Dietsch: We make it to the House and then the House in turn would implement something?

Mr. Chairman: Either adopt it, or it could sit for a while and not be done.

Mr. Eichmanis: Maybe I could explain. The report goes to the House and is debated but also the report is directed at the responsible minister. So, for example, on the Ontario Food Terminal Board, the Minister of Food would be responsible for that agency. It comes within his office the committee would ask the minister to take our recommendations and reply within the 120 days that are recorded by the standing orders.

Mr. Dietsch: Would that same type of format apply to all the programs we would be reviewing, no matter what group they fall under? Is that correct?

Mr. Velshi: Under Management Board, I notice that we have the Civil Service Commission. Under what grouping does that fall? Does that fall under our purview or jurisdiction or is it a completely separate thing?

Mr. Alfieri: The Civil Service Commission is a scheduled agency of Management Board. Its purpose is to administer and exercise overall responsibility for the Public Service Act. In that capacity, it would fall within your purview.

Mr. Runciman: I wonder if our witnesses could indicate how long they have been serving Management Board. I would just like to know your experience.

Mr. Gardiner: I have been with Management Board for three years now. I started in November 1984.

Mr. Runciman: Where were you before that?

Mr. Gardiner: I was with the Ministry of Municipal Affairs and Housing as a community planner in both Ottawa and Toronto.

Mr. Jackson: And a damn good one at that, as I recall. Chairman of the housing authority.

Mr. Alfieri: I have been with Management Board since May 1, 1986. Prior to that, I served for 24 years with the Ministry of Community and Social Services.

Mr. Runciman: I knew we had bumped into each other somewhere.

Ms. Tilford: I have been with the secretariat since March of this year. Previous to that, I had five years with the Ministry of Community and Social Services, and seven years with the Ministry of Housing.

Mr. Runciman: So you are all relatively new players at the board.

There is something that bothers me, especially with respect to Management Board and at the deputy minister level as well as in various ministries. That is the turnover of staff. I think in terms of the important role that Management Board plays, I would like to see a little more continuity there and the experience that goes along with that.

I am just wondering if, from your brief tenure there, you would care to



comment on any weaknesses that you might have seen with respect to the board. Perhaps there are things on which you should have more influence, but because of your current mandate, you are unable to either comment or take action.

Mr. Alfieri: Given the short experience we have all had with respect to this activity, we cannot provide a historical perspective, but the directives that Mr. Gardiner has outlined to you are fairly new. As you know, the old Manual of Administration was done away with last year and was replaced with a new set of directives and guidelines. The directives and guidelines with respect to agencies, boards and commissions follow the recommendations of the Gracey report, which is a two-year-old review of agencies and boards. So the current system has been operational for about a year now.

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is, first of all, ensuring that ministries are aware of responsibilities and are properly discharging those. We have undertaken a fairly extensive training process with respect to all our directives and guidelines. We have courses on board four times a year for new staff of ministries that are responsible for the administration of the new directives.

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What we are currently doing is reviewing this in the light of our first year's experience. I cannot attest or speak to any specific weakness. I think what we want to do is tighten up the administrative process a little bit, both internally and externally, ensuring that sunset reviews are carried out on time, ensuring that orders in council are properly prepared and so forth. Primarily, the responsibility for the determinations of whether the system itself or the judgement of whether an agency is appropriate or not rests first and foremost with the ministry responsible.

Mr. Runciman: May I interrupt here? You are a well-trained civil servant. You do not see any weaknesses at this point. That is what you are saying, in essence.

Mr. Alfieri: We do not see any weaknesses that deal with the overall process. What we are looking at are ways to tighten up and improve upon our process and put it in place right now. The manual was released last December, so it is a fairly new process.

Mr. Runciman: Last year, I was involved in the IDEA Corp. and I am not sure which schedule the IDEA Corp. would have fallen under. But if you recall, the government wound down the IDEA Corp. and transferred its portfolio to another agency, the Ontario Development Corp. In my view and in the view of a lot of observers of that situation, that was an error and, in effect, cost the taxpayers of this province a considerable amount of money. The ODC simply was not a suitable agency to assume that portfolio. Its mandate was completely different from that of IDEA and the thinking in terms of management of ODC was completely different.

It seems to me that is an area where the board could play a role in terms of reviewing the government's intentions along those lines and saying: "Look, this is not a good idea. This is what you should be doing. If you want to get rid of IDEA, let it wind down itself, exhaust its portfolios, put it out to the private sector or what have you, but do not simply throw it on to another government agency which is incapable and ill suited to handle it and as a result will cost us a lot of money."

I do not know if you have any observations on that or would care to



expound on it today, but that is a personal view. In my view, that is a weakness in the role that Management Board could be playing.

I was also wondering about the new directory or whatever you call it, the guidelines. There was a point in the old Manual of Administration whereby if a minister wanted to spend under \$20,000, he had complete latitude to do that. If he wanted to go out and hire a consultant or what have you, he did not have to go to the board for approval unless it reached a certain level. That is still in force, I gather.

Mr. Alfieri: It is \$25,000, I believe. I presume you are speaking of the hiring of consultants.

Mr. Runciman: Yes.

Mr. Alfieri: The new ceiling is \$25,000 for single-sourcing, beyond which it must be under the comparative process.

Mr. Runciman: You do not see any weaknesses with that. If, as a minister, I wanted to go out and hire you as a consultant and I hired you on 20 separate occasions during the course of a fiscal year, and on each of those 20 occasions it was under \$25,000--

Mr. Alfieri: It could not be for the same purpose or the same project. It would have to be for specifically and justifiably different activities. It could not be just follow-on contracts.

Mr. Runciman: Who is to say that? Who is to follow up on that if you are not reviewing that kind of thing? It does not even come to your attention unless it exceeds \$25,000. Am I right?

Mr. Alfieri: It does not come to our attention for the purpose of approval. We do obtain a report on all consulting contracts that are let by ministries, both over and under \$25,000, on an annual basis. Our review of that would indicate that happened and would possibly prompt us to look into the situation. No, we would know about them before the fact, but we would find out after the fact.

Mr. Runciman: I would be surprised if you did anything about it, to be quite honest. I am not being critical but I would be surprised.

Mr. Jackson: Once you have that information, what is the nature of your inquiry?

Mr. Alfieri: First of all, we do a review of it and then we do a report to the board. The nature of our inquiry is primarily one of information gathering. If we find that clarifications are required, we go back to the ministry and look at it, based on one year's experience. I venture to say that the concerns that have been articulated are not there. By and large, ministries adhere to the guidelines in good faith.

Mr. Runciman: Another thing I wanted to bring to your attention was advertising contracts. There have been a lot of concerns expressed over the years about the political nature of the contracts. I guess there was an appreciation when our party was in our power that the agency of--what is the term?

Mr. Alfieri: Of record?



Mr. Runciman: --of record was publicly, anyway, considered to be a Conservative firm. I guess the firm that is now operating is recognized as a Liberal firm.

I am raising that because of the government's position, often articulated, that it is not engaged in the partisan game, that it is doing what is in the best interests of the Ontario taxpayers. I am just wondering what the process is in terms of the board reviewing these. Strangely enough, you have a Liberal firm as the agency of record and that seems to conflict with what the government is telling us.

Mr. Alfieri: There is a new policy out. Last year or a year and a half ago a new agency was created which is an internal agency, not one of these; it is called the Advertising Review Board. The purpose of that board is to ensure that in fact all contracts that exceed \$500,000 in cost over a three-year period go through not only an internal ministry process but also the Advertising Review Board for the purpose of the competitive selection of the successful bidder. I think, just off the top of my head, that the 34 contracts that have been subject to the purview of the Advertising Review Board went to 27 different firms over the past year and a half, which means that the business is being spread around.

I cannot speak as to the political inclinations of the various firms--I would not know that--but I can attest to the fact that the process is both competitive and fair: fair in the sense that very often we receive letters from firms that were not successful and speak to the fairness and the objectivity of the new process. I think what we have in place now is a system that does ensure that any business is spread around and that the competitive process is in fact in place.

With respect to the agencies of record, different ministries have different agencies. As I said, the only thing I can say in that respect is that out of 34, 27 different firms are now involved. I think that speaks quite well to the way things are currently being done.

Mr. Dietsch: Could I ask a question, Mr. Chairman?

Mr. Chairman: Is it a supplementary?

Mr. Dietsch: Why do you not tell me? You make the ruling on it.

I am trying to get an understanding as to whether we are reviewing Management Board this morning or just trying to get information on how this operates.

Mr. Chairman: -

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i g indicates to me that we are reviewing the Management Board, and I guess I just wanted to be sure what type of process we should take here.

Mr. Chairman: I think we will continue for the time being and debate some of those things we think could be done.

Mr. Runciman: One final question. I am just wondering: The review that you are giving us this morning on the operations of Management Board--I guess I have two questions here--have you done something similar with the



members of the board? Have they gone through this kind of review to understand your function, your role and just what you are all about?

Mr. Alfieri: I am sorry, are you speaking to the new members of Management Board?

Mr. Runciman: Yes, I am.

Mr. Alfieri: That is an intricate process. Whenever there is a need to bring something before the board, we first start by articulating and outlining why the item is before them. At that point we explain the policy of the directives behind it.

Mr. Runciman: I am aware of that. I am just asking, do you go through this kind of process of sitting down with the board and telling them about what is involved--the same sort of thing you have done here with us this morning?

Mr. Alfieri: Not to the same extent, but yes. Yes we have, but not to the same extent as we went through here. Not to the same degree of detail.

Mr. Runciman: I have one final question, Mr. Chairman; this will be the final one. I just--oh, no, I will not get the answer I am looking for anyway. Move on.

Mr. Black: It has been so long ago that I have forgotten what my question was. Can I come back and get another chance in a few minutes?

Mr. Chairman: All right.

Could you explain to me the audit situation that you go through for these agencies? You indicate that you do some and they should report to you yearly. Do you get a report from each agency yearly?

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Mr. Gardiner: No, we would not get the audit report. The ministry would presumably get the audit report, but if there is any audit that needs to be done internally, that would be done--

Mr. Chairman: If there is an audit that needs to be done.

Mr. Gardiner: That is correct.

Mr. Chairman: So not every agency then has an audit every year.

Mr. Gardiner: I would not know. I would not want to say they all would.

Mr. Chairman: Your schedules II and III would, probably.

Mr. Alfieri: Well, the schedule Is are subject to internal ministry audit on an ongoing basis, so we would not know. Even ministry programs are not audited on an annual basis, all of them. The internal auditor of a ministry does a work plan and goes through a variety of processes whereby every once in a while a specific program is audited. The board and the secretariat do receive all reports of the Provincial Auditor in respect of any agency or board, so whenever the Provincial Auditor does an audit, we get a copy automatically.



Mr. Chairman: The purpose of my question was the fact that if we want to look at a certain agency, do we contact your office and say: "We are looking at this certain agency. What is their budget for last year?"

Mr. Gardiner: I would say that your best form of doing that would be to go directly to the ministry and say: "We are interested in this particular agency. Can you give us a memorandum of understanding, the legislation, any information on finances and that sort of thing?" I think that is your primary way.

Mr. Chairman: Thank you.

Mr. Jackson: My line of supplementary questions was getting to the process of how you audit. When we go back to Mr. Alfieri's response to when they receive the reports from the ministries with respect to multiple contracts, in your own examination of those reports, you might indicate that ABC Consulting received \$250,000 worth of contracts over the course of a year, all individually under.

Who examines that? Is that person an auditor or an administrator? What is the nature of your report, because I just thought I understood Mr. Gardiner to indicate that, in fact, the auditing functions are confined to the ministry--the statute assigns auditing functions for each of the agencies, boards and commissions--or the auditor who discriminately chooses specific agencies, boards and commissions.

Are we wrong to assume that you perform any form of audit? It is just basically a matter of interest that you are looking at these matters? What authority is it?

Mr. Alfieri: It is (inaudible) activity to review it. First of all, I think I should specify that most of the schedule II and schedule III agencies, in respect of consulting contracts, again are not subject to Management Board's directives and guidelines.

Mr. Jackson: Yes.

Mr. Alfieri: So when we are talking about these types of contracts, we are either talking about ministry contracts or those that are let out by schedule I agencies, which are supposed to follow the directives and guidelines of the board. That particular responsibility belonged to our information technology division, and it has just recently--last month, as a matter of fact--been transferred to us. The report they had just received from line ministries is a report as to all the contracts that they had issued and their values. Now, that is not an audit. Based on that report, then one of the officers who is responsible for that would analyse that, and if there are clarifications that are required or questions of compliance, the officer would go back to contact the ministry and get clarifications of those. If issues of noncompliance are found, those are then reported to the board and the ministry is so advised.

Mr. Jackson: Okay. I guess the other half of the question I asked was, what were the qualifications and what was the size of your workforce in order to perform that function? I mean, are these clerks or are they auditors?

Mr. Alfieri: Oh, no. These are professionals, AM-20, AM-21 levels. These are fairly highly trained and well-qualified people who do that.

Mr. Jackson: How many would you have at your disposal?

Mr. Alfieri: It depends.

Mr. Jackson: You are a new division; I understand that.

Mr. Alfieri: In my division, for instance, Ms. Tilford would be responsible for six or seven ministries. There are four or five officers, each of whom is responsible for a number of ministries. I think in respect of last year's activity around these contracts there were two people who were specifically assigned to review that for a period of time on a full-time basis. But I have just general knowledge of it. Again, as I said, this responsibility has just been transferred to my division, so I cannot give you details as to the specifics.

Mr. Jackson: In the course of the year, did those two individuals come up with any flags that they felt appropriate to--I have been trying to quote your words--but about which you felt impelled to go back to the ministry and advise them that you needed further clarifications?

Mr. Alfieri: I am sorry, but I cannot speak to the specifics. In respect of flags, these things go on all the time. Our staff work with ministries on an ongoing basis. They provide advice. They provide guidance. Sometimes they want to come forward with their request for a competitive process. Sometimes they feel they should not, and then these things are discussed. In that context, there is ongoing dialogue.

What I am speaking to now is that once a year each ministry is supposed to send us a report as to all the contracts it has allowed, which include both those we are aware of because they came to the board for approval and those we are not aware of because, basically, they would be under \$25,000, for which no prior approval is required.

Mr. Furlong: I am interested, Mr. Gardiner, in the corporate plan provision. You indicate that schedule II agencies are required to file a plan. Does that mean that schedule I and schedule III agencies do not? Or do they, as a matter of practice?

Mr. Gardiner: No, they would not have to file a corporate plan.

Mr. Furlong: So if we were to select an agency out of schedule I or schedule III, we would not have a corporate document or a long-range plan for that agency.

Mr. Gardiner: Not necessarily. That is correct.

Mr. Eichmanis: But I think you should explain that schedule II agencies are commercial agencies. Therefore, to approximate what happens in the private sector, where private sector companies would have a corporate plan, the government has recently introduced a similar kind of process for government agencies to have a corporate plan. The idea is to approximate more closely the private sector.

Because they are commercial, in effect, as Mr. Gardiner indicated--they either produce a service or create a product of some kind--a corporate plan makes sense; whereas the others are the Social Assistance Review Board on schedule I, which does not produce anything. I mean, it is not a service, it is not a good and, therefore, that is the reason you would have a corporate plan for schedule II, because they are what we ordinarily call crown corporations, quasi-commercial agencies.



Ms. Tilford: Two things. There are quite a number of operational schedule I agencies for which ministries, because they have gone through the process with the schedule II agencies, now are finding it a very useful document and are requesting some of the schedule I agencies who are operational to follow through with a similar kind of document. It is something they are seeing as a good practice and requesting schedule I agencies to do.

Mr. Furlong: So we could assume that some of the schedule I agencies would have plans.

Ms. Tilford: There may be some, yes.

Mr. Furlong: Thank you.

Mr. Black: On a question of clarification, Mr. Gardiner, I understood you to say that Management Board, or the secretariat of Management Board, does review individual agencies as their sunset clause comes due. Is there a systematic review, either by Management Board or by the secretariat, to ensure that there is not a duplication or an overlapping of agencies?

Mr. Gardiner: Yes, we would. When the sunset review that is prepared by the ministry in conjunction, perhaps, with the agency, comes in to the board, we would have officers in the program and estimates division who are on the staff who look at the financial affairs of the particular ministry and deal with the finances and know in quite a bit of detail the programs of the particular ministry: their pressures, where they are getting funding, where they are not getting funding, this sort of thing.

They would do their analysis. They would also then ask us if, in fact, the sunset review has met the requirements of the directives. Have they looked at enough matters in here, as is set out in the directives? So it is really a matter of a couple of officers getting together with different expertise, going over it and just making sure that, in fact, the ministry has done a proper job.

Mr. Black: A supplementary, if I may. Do I understand correctly, then, that these close looks are conducted on a nonpartisan basis? In other words, are they conducted by civil servants without regard to the party that is in power at the time?

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Mr. Gardiner: Yes, that is correct. And, once the analysis has been done, then the matter is taken to the Management Board, and a recommendation is then made as to accept the sunset review recommendations, or modify them, or whatever the analysis has suggested.

Mr. Black: One more supplementary, if I may. When that process takes place, have there been recent examples of agencies being phased out or eliminated because of the feeling that there has been duplication?

Mr. Gardiner: Yes there have. I am not aware of them at the moment. Some do not come to mind. Maybe one of my colleagues could answer.

Ms. Tilford: A couple of examples might be with the Ministry of Community and Social Services. There was the Ontario Centre for the Prevention of Child Abuse. That was seen as no longer being required within the government as a schedule I agency. It was better to be out in the community as

a transfer payment agency. That has just taken place this past summer, I believe, or in September.

Another one was the Ontario Manpower Commission. It was within the Ministry of Labour at the time, and the Ministry of Skills Development most recently. It needed some revitalization. Previously, it was a schedule I agency, but some of its functions have now been moved into Treasury, and the Ministry of Skills Development and into some of the leading edge skills development training that is to be put out into the private sector. They have now developed a new, schedule II training agency, the Ontario Training Corp., that has had approval and is being established right now. They really took a good look at what that agency was doing, saw that it was no longer fulfilling the functions, that were desired.

Mr. Chairman: Two more each and then Mr. Breaugh.

Mr. Dietsch: Really a supplementary to the line that we were following. In terms of those reviews that have taken place, is there an overview that can go on for this list that can indicate to us those that have been through the sunset approach, so that we can be updated in that respect?

Second, there was some discussion about a Gracey report. Could you elaborate a bit on that report, when it was done and what the review process would be?

Mr. Alfieri: It occurred before my time, Mr. Chairman. Again I cannot give you the details, but it was intended to review all of the agencies, boards and commissions in terms of reference, their purposes, how they should be scheduled and so forth. The new directives and the new guidelines are outcomes of that particular review. I cannot speak to the specific recommendations. They occurred a few years ago, and none of us were there at that time.

Mr. Eichmanis: If I could just add one little comment to that. One of the recommendations in the Gracey report was that what used to be schedule IV agencies should be dropped from the schedules entirely. These were things such as the farm marketing boards, local police commissions and a whole host of very distant kind of agencies. They were totally dropped from the schedule. There used to be four, and now there are only three. That was one of the more significant recommendations of the Gracey report, to drop what used to be schedule IV agencies.

I should point out that the terms of reference of this committee are a little different from the Management Board's definition of agencies. Under the Management Board definition of agencies, where a majority of members are appointed by the government, they are considered an agency. Under our terms of reference, we can look at agencies where some, or all, members of the board are appointed by the government.

Mr. Dietsch: Our list is really broader than this particular list, because I understood it to be funded in part or in whole.

Mr. Eichmanis: We have a mandate that goes beyond the Management Board list.

Mr. Breaugh: I want to pursue for a minute or two some of the remarkable things that have happened here. By my count, about 500 agencies have disappeared somewhere, by means, I think, of redefining what an agency



is. Do you have some kind of a summary report of how many have actually gone out of business, and how many have just been redefined off your list?

Mr. Alfieri: The list before you, those that Management Board of Cabinet is interested in, again includes those agencies to which the board either appoints a majority of members or which it funds. There is a host of other agencies over which the board is not interested in exercising its administrative control. Examples of those would be the district welfare administration boards.

In Sudbury, the Ontario government appoints one member to the Sudbury district welfare administration board, which is composed primarily of elected local officials, whose job is to provide social assistance in the district. Those are the kinds of agencies that would have been dropped from the management board list in the sense that, even though the government appoints one member, the government is not interested in exercising administrative control over that kind of agency.

A list of all those agencies is available, I believe, from Treasury or from the Cabinet Office, and we would be happy to ensure that you get one. But those, Mr. Breaugh, are the kinds of agencies that have been dropped from our schedule.

Mr. Breaugh: I am interested in pursuing it just a little bit, because one of the first things this committee ever did in a different forum was to try to find out how many agencies there are. It certainly was not an easy task at that time, and it is not being made any easier by the fact that you are in the process of redefining what an agency is and putting them into different schedules.

I am a little bit concerned that they may still be out there on the loose, aliens on our planet, and that you have chosen not to be responsible for them any more. That is fine, but somebody has to try to keep track of these poor folks. Do you think there might be a list somewhere?

Mr. Alfieri: Yes, I am sure there is a list. As I said, we will be happy to make sure that you get it. But I would not say that they were on the loose. Each of those agencies--

Mr. Breaugh: They are just no longer under your control.

Mr. Alfieri: Yes, they are no longer under our control. Each of those agencies is responsible to a minister under a specific piece of legislation. In that context there is an accountability framework.

I doubt very much that Management Board exercised any control over the district welfare administration board. I was very familiar with the operation of those boards in those days in one of my former capacities in the Ministry of Community and Social Services. The control was exercised by the ministry in the funding and program monitoring of the General Welfare Assistance Act, the Homemakers and Nurses Services Act. I never recall the board being overly interested in that kind of an agency, because they were so at arm's length. In essence, they are no different from a municipality for the purpose of social assistance.

Basically, what we are saying through our directives is that those are not the kinds of agencies that primarily interest the board for the purpose of administrative and financial management.

Mr. Breaugh: All this makes eminent good sense from your point of view. My problem is to know who is looking after these folks now.

Could you give us a list of agencies that have actually gone out of existence, that you know have been sunsetted--say in the last five years? How many have actually been done away with?

Mr. Alfieri: We will be happy to send you that. We do not have it with us.

Mr. Runciman: Not necessarily sunsetted but redefined.

Mr. Breaugh: That would be the kind of information that would interest me. I recall that the first major problem we had was very similar to this--trying to define an agency, who is responsible for this agency and where the hell it is. It seems to me we still have the same problem.

Mr. Chairman: Perhaps we could have that before next week.

Mr. Alfieri: Yes, Mr. Chairman. In that context, we would also be happy to leave with you a list of the agencies that are scheduled for sunset reviews over the next five years.

Mr. Chairman: Do you have a supplementary, Mr. Runciman?

Mr. Runciman: Mr. Breaugh raises a good question. I am just looking over, under the Ministry of Health, the Lieutenant Governor's Board of Review, which is a schedule I agency. Does that include all of the regional review boards? I know there is an eastern Ontario mental health review board. The Lieutenant Governor's board is a separate board. I am just wondering if those regional review boards fall under that broad definition or if they are separate. If they are separate, then why are they not here? One of the changes that has taken place is in the per diems for the chairmen. For example, it used to be \$150 a day three years ago. It is now \$550 a day.

Mr. Breaugh: So they are not lost.

Mr. Alfieri: Many of those review boards, by the way, in terms of per diems, only get paid when they sit. Those are not ongoing boards with full-time appointees. The majority of those are part-time appointees and they get paid a per diem or honorarium, depending on when they serve.

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Mr. Runciman: --jobs pay so well.

Anyway, I am asking about that specific one, review boards. If you do not have the answer today, perhaps you can include it in the mailing and get back to us.

Mr. Breaugh: No, I think they should be congratulated on bureaucratic brilliance here. This is a hell of a way to cut down on the number of agencies. Redefine it. It is a great move.

Mr. Chairman: Thank you very much for appearing before us this morning. I appreciate it and we will look forward to having the information before next Wednesday's meeting.



ORGANIZATION

Mr. Chairman: Report of the subcommittee, would you like to read that?

Clerk of the Committee: The subcommittee met on Monday, December 7 and the following is the subcommittee's report.

Regarding criteria for selecting agencies to be reviewed. Your subcommittee recommends the following selection process for the next year:

(1) Committee members submit up to five agencies per party caucus for selection.

(2) Committee members select eight agencies from the 15 on the short list; four of the eight would be scheduled for hearings during the winter recess, with the remaining four to be reviewed during the summer recess, August to September.

(3) Agencies selected for review ought not to be ones reviewed in the last five years.

Your subcommittee also recommends a further review of selection criteria be undertaken by the committee next year.

The second part, regarding the schedule of committee business: Your subcommittee recommends that the committee request authorization by the Legislature to meet for four weeks during the winter recess.

Your subcommittee further recommends that the outline of the committee's schedule during the recess be as follows:

Week 1: Briefings by committee research officer on agencies selected for review; travel, where appropriate, to the site of agencies; meeting days suggested: Tuesday, Wednesday and Thursday.

Week 2: Agency review hearings at Queen's Park; meeting days would be Tuesday, Wednesday and Thursday.

The same would apply for week 3.

Week 4: Travel to Boston and Washington, D. C. for comparative examination of legislative oversight of agencies in those two US jurisdictions; where appropriate, Boston and/or Washington visits would include meetings with counterparts of Ontario agencies selected by the committee for review; meeting days suggested, Monday and Tuesday, Thursday and Friday, with travel days to be Sunday, Wednesday and Saturday.

Mr. Chairman: Any comments on that report?

Mr. Breaugh moves, seconded by Mr. Black, adoption of the report.

Mr. Breaugh: The only comments would be that I think we are all going to have to now knock heads over scheduling. This will be the next major problem.

It would appear to me that my difficulty is going to be that I am getting kind of jammed up in January and February so we may have to kind of do

some split weeks and things like that. But everybody is going to have the same problem, so the next difficulty is to get the House leaders' concurrence on when this committee can sit. Everybody's personal committee schedule is going to have to shake down.

Mr. Chairman: All committees are going to have the same problem.

Motion agreed to.

Mr. Chairman: The budget is next and I believe that report would detail some of the stuff that would be in the budget. I presume this budget will be until March 31. I will have to present it to the Board of Internal Economy for its approval. Any questions with regard to the budget?

Mr. Black: Could someone give me a rough idea of how this compares to previous year's budgets?

Clerk of the Committee: In my experience with the committee, the committee did not travel and so the last year's budget was about \$20,000 lower with no travel costs included.

Mr. Breaugh: It would also be a lot less, because it is only for a portion of the year.

Clerk of the Committee: Yes.

Mr. Velshi: How important is the need to travel to the different areas? If it was not done last year, when was it last done?

Mr. Chairman: This committee has travelled hardly at all.

Mr. Eichmanis: I should explain it was in 1986 that this committee was created. Previously, this committee's function was subsumed under the standing committee on procedural affairs and agencies, boards and commissions, which had this function, to review agencies, as well as what now is with the standing committee on the Legislative Assembly, to review the standing orders of the House.

Under the umbrella of that agency, the committee did travel in 1985 to review agencies. It went to Moosonee, Thunder Bay and Minaki Lodge, hence its recommendation that Minaki Lodge be sold. That procedural affairs committee did travel to various jurisdictions. The last time dealing with agencies was in 1985.

Mr. Breaugh: Maybe I can help a little bit. We began the practice, which I think is worth continuing--it does not apply to all agencies, but it did make good sense to us, and I think it was worth while--to actually visit where there was an operational aspect to it. A lot of these are in and around Toronto, so it is not a big deal; it involves going to the Ontario Science Centre or going to see how the Canadian National Exhibition operates. You just basically see them from a different perspective, that is all.

The committee thought it was useful--not for every review, but for some of them where they have a big operational side. Some of these agencies are basically groups of people who meet and set regulations, so there is nothing to see. Some of them do run the St. Lawrence Parks Commission, Upper Canada Village and things like that. So where it is appropriate, I think that is a good practice.



We did find it was useful previously to compare with other jurisdictions and how they do these reviews. Since we have a lot of new members, I would suggest that would be a worthwhile thing to do, just to see how an American state legislature goes through this in quite a different way and how the Congress does that, which is probably a more active type of review process than we would see here.

Motion agreed to.

Mr. Chairman: The other item of business is that from that report we were to put in five recommendations from each caucus. I would like to have them because next Wednesday we are going to want to make the final decision on them; perhaps each one could relay to the clerk the names of the ones their party has recommended. Perhaps some will be recommending the same ones, which will make the job of picking them a lot easier.

Mr. Eichmanis: If it is useful to the committee, the New Democratic Party has suggested the Ontario Science Centre, the Pension Commission of Ontario, the Royal Ontario Museum, the Council on Franco-Ontarian Affairs and the St. Lawrence Parks Commission.

Mr. Velshi: What was the second one?

Mr. Eichmanis: The Pension Commission of Ontario. Those were the suggestions of the NDP caucus. We still have to hear from the Liberal caucus and the Conservative caucus.

Mr. Dietsch: Perhaps what we can do is submit something to you this afternoon for your perusal.

Mr. Chairman: Yes.

Mr. Furlong: I have a question. Are things like the Workers' Compensation Board out of the question because of other reviews that go on there? That could be something--

Mr. Eichmanis: They have been reviewed.

Mr. Breaugh: This is a little bit of a sticky piece of business because theoretically this committee can review any agency that is on the list. The practical problem is that it is a little silly, if somebody else is already reviewing that agency, to call those people back in.

My suggestion would be that if you know a review of the agency is taking place by another committee of the assembly, perhaps we could do our review at a later date. In the subcommittee report, the suggestion is that if we have conducted a review in the last five years, we should leave them alone for a while.

Just as informal, cheap advice I would say that if some other legislative committee has that on its agenda, there is not much benefit in our doing it. There are 700-odd agencies to choose from, so you really should not have to duplicate.

Mr. Chairman: OK. So you will have yours in this afternoon and we will have ours in. I have some, and my colleague has a couple that he is looking at. We will work on them and have them in this afternoon. Next week we would hope to be able to finalize it.

I would observe that we have one the same as the New Democratic Party, so that makes it easier to whittle it down.

Mr. Dietsch: I missed your last comment. Did you say your list was exactly the same as the NDP?

Mr. Chairman: I said we have one the same.

Mr. Dietsch: Oh, one. When would we receive a compilation of all the agencies?

Mr. Chairman: As soon as they are handed in, the clerk will make a list and we will get one for every member.

Mr. Dietsch: And circulate them?

Mr. Chairman: Yes.

Mr. Black: At some point or other, I would be interested in hearing why the different caucus groups have selected or identified the agencies they would like to review, because there may well be reasons that I would not be aware of. I might even find myself supporting the NDP list.

Mr. Breaugh: Let me take a minute or two. All we did was, between Shelley and me, take the ones we are interested in, for starters. Second, with a little bit of a spread between those that are operational, those that are regulatory and that kind of thing, if you throw out the ones that have been reviewed in the past five years by the committee and the ones that are under review or on some other committee's agenda, you come up with a very arbitrary list of four or five. I do not think anybody would break out in a cold sweat if you had seven or eight. Just pick an arbitrary number, and then, where we can agree that we would all like to review the same agency, that is the one we will do. It is fairly simple.

Mr. Chairman: The way I looked at some of ours was I went through the list of those that had been done and picked some of them that maybe would be of interest. I made sure I did not pick ones that had been done over the past five years. I tried to get some others.

It is rather simple: just whatever you are interested in or maybe what your party would like to see interviewed. Maybe there are some that have not had anything looked at for many years. Maybe they should be sunsetted, or maybe we should be saying, "Let us interview them and find out what they are doing."

Mr. Breaugh: It is a little different kind of review than any other legislative committee does. The standing committee on public accounts, for example, reviews a number of these agencies too, but it is kind of restricted in the sense that it is basically an auditing committee; financial audits of those agencies are what public accounts deals with. Ours is a little looser type of review about who this agency is, how active it is--part of it is the financial consideration, but it is not the only part--and whether it still performs a useful function.

Over the years, a number of them were quite happy to be reviewed, because nobody had paid any attention to them for a long time; they wanted to show you what they are doing. Some of them use it as an occasion to kind of put forward their problems--the stockyards or the food terminal, the kind of



facilities they are operating, their location and their needs.

Minaki Lodge is a good example. A number of legislative committees had taken a run at that but were kind of restricted on how they got their information. Because we did not have those restrictions on us, we were the first committee of the Legislature to get, maybe not the complete picture on Minaki Lodge, but we certainly managed to dig out a lot more information. It was the first committee of the Legislature that ever actually visited the site. Although it had been discussed in the Legislature a lot, most members place.

Mr. Black: Allan mentioned the Workers' Compensation Board. I a feasible agency to look at?

Mr. Chairman: It was done within the last five years. I am sure of it.

Mr. Eichmanis: It has been done by several committees. To do a review on the Workers' Compensation Board would probably take a whole week in itself.

Mr. Dietsch: Or longer.

Mr. Eichmanis: Or longer.

Mr. Runciman: I have put one on here, but I think it has been reviewed during the last five years: the Ontario Securities Commission. I have done that essentially because I have heard the place is in chaos with significant resignations and a backlog of well over two years now in terms of investigating cases. I do not know how rigid we should be with respect to the five-year review, because a lot of things can happen over a five-year period.

Mr. Eichmanis: That one has not been reviewed.

Mr. Runciman: It has not been? OK. Good.

Mr. Chairman: If there is nothing further, we will adjourn until next Tuesday.

The committee adjourned at 11:23 a.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW

WEDNESDAY, DECEMBER 16, 1987



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

McGuinty, Dalton J. (Ottawa South L) for Mr. Black

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, December 16, 1987

The committee met at 10:10 a.m. in room 228.

AGENCY REVIEW

Mr. Chairman: I presume today we would like to try to get our list whittled down to about eight. I have a letter here from Larry South. Has this been added to the other list? We are asking for five; he sent a list of six. The Ontario Racing Commission is one that is already on. The Education Relations Commission, the Advisory Council on Occupational Health and Safety, the Ontario Food Terminal Board, the Royal Ontario Museum and the Art Gallery of Ontario. So they have four on the original list that was sent in and there are four on the memorandum I have from Larry South. Do you have a copy of his memorandum?

Mr. Dietsch: No, I am sorry.

Mr. Chairman: Anyhow, I think we can proceed with the list that was originally sent in, because that is what the request was. Does anybody have any comments on that?

Mr. Velshi: What is Larry South's memorandum about?

Mr. Chairman: He has sent a list of agencies or commissions.

Mr. Dietsch: Let me clarify. I did receive a copy and it is the same as Mr. Arnott has indicated.

Mr. Chairman: Okay, so we can disregard is letter. Fine.

I guess our duty is to try to whittle it down. We have 15 here. May I start? The New Democratic Party and the Progressive Conservative members have sent in the St. Lawrence Parks Commission. Both of them have. I would suggest that that be one. Would that be agreeable to the committee? Then we will work out when we go do that one, whether it may be in the follow-up. Okay? What other one is a priority? The racing commission was done three years ago?

Mr. Eichmanis: In 1981.

Mr. Runciman: Can we hear some of the rationale why we may want to look at a specific agency?

Mr. Chairman: No, it is just what the members want, what they feel is a priority, what they would like to look at.

Mr. Runciman: But if we want to persuade someone, it is only fair that we hear some of the reasons behind it.

Mr. Jackson: The rationale. And furthermore, if I might add, is it possible to get the date on which--I did not do the cross-checking, but perhaps John can tell us which of these were done when last.

Mr. Eichmanis: We can just go through them. The Ontario Food Terminal Board was done in 1979, the Education Relations Commission in 1978, the Ontario Racing Commission in 1981, the Civil Service Commission in 1982 and the St. Lawrence Parks Commission in 1978. The rest, therefore, have not been reviewed.

Mr. Chairman: The Advisory Council on Occupational Health and Safety?

Mr. Eichmanis: No.

Mr. Chairman: Maybe what we should try to do is delete some of the ones that are here, work that way; or you can work the other way: pick out the ones that you want to review. I kind of like the Ontario Waste Management Corp. I think we could get into a lot of disposal sites and look at some of the environmental issues that are taking place. That is why I had indicated that as one of them.

Mr. Runciman: Which one is that?

Mr. Chairman: The Ontario Waste Management Corp. Is that not Dr. Chant?

Mr. Velshi: How many can we get through in this session and the next session? Let us look at numbers first.

Mr. Chairman: Yes. What we want to do is pick out eight, four for this session and four for the following. We will do four this spring and we will do four next fall.

Mr. Dietsch: I guess, from a time factor point of view, there are some, obviously, that will not take the time that others will take. It is conceivable that we could do more than eight. Is it realistic to look at that?

Mr. Chairman: I do not think so. I think if we are going to do them, we should do them right. I can tell you the St. Lawrence Parks Commission may take three days.

Mr. Dietsch: OK. I am speaking from inexperience. You people have had an opportunity to look at these sorts of things before. If we do not do it right, then I do not think there is any point to doing it.

Mr. Eichmanis: If I may add, the committee may wish to consider in the case of the St. Lawrence Parks Commission whether it would want to take a trip to the commission itself, along the St. Lawrence.

Mr. Chairman: That would have to be a must, because when we did the Niagara Parks Commission--you cannot do a study on what they have unless you go and see it.

Mr. Eichmanis: So that is at least one day there, then.

Mr. Velshi: Which are the ones on this list that will take a long time, the more complicated ones, and which are the ones that are not that complicated?

Mr. Eichmanis: If I may, I would say a minimum of a day for most of these, like the Ontario Science Centre. Again, it would be a trip to the science centre just to visit it and to have explained how it works and all



that, plus a day here for hearings. There are no real small ones here that I can see. Conceivably the Review Board for Psychiatric Facilities (Eastern Ontario) could be only a morning. That is the only one I could see that could be just a morning. Possibly the Workers' Compensation Appeals Tribunal could be a morning.

But that really is up to the committee members and how in depth they want to deal with these. I think it would be fair to say the rest of them would require at least a day and in some cases two days because of the trip involved, so that a trip to the terminal board, the racing commission--when we reviewed it in 1981, we went to the Mohawk Raceway out in--

Mr. Jackson: Milton.

Mr. Eichmanis: Yes, out there. We spent the evening there looking at all the various tests and procedures that are required to be conducted on the horses and the jockeys; that was all explained. Then the members saw a race in action. So that is a field day, plus a day here. I would think the Advisory Council on Occupational Health and Safety would be a day, since it has been reasonably controversial. The Civil Service Commission: again, there have been some changes, in that some of the responsibilities of the Civil Service Commission have been transferred to what is now the Human Resources Secretariat of our Management Board, and the relationship between what exists now as the Civil Service Commission and the Human Resources Secretariat could be explored to find out exactly what role each plays.

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Mr. Chairman: Let us look at it from this point of view: We have each come in with five. We are talking now about four to do this spring and four to do this fall. That is eight. Why does each party not say now the two they could take off their list? That would then get it down to nine. We have got to start somewhere, and you can look at the ones that have been done in 1981, 1982, 1978, 1979. Which two can you leave off, and which two would you like to leave off?

Mr. Dietsch: I would like to suggest we look at it another way. Let us look at it from the positive side: Which two do we want to do right away? Therefore, you are going to come in the other way and you are going to have something constructive as opposed to removing items. What are the priorities?

Mr. Chairman: OK. What is your priority for your two?

Mr. South: The Ontario Food Terminal and the Civil Service Commission.

Mr. Chairman: Yes, those are two good ones. We can do those ones in the wintertime without any problem.

Miss Martel: I will have to take the two that I chose, because Michael Breaugh is not here. I chose the Pension Commission of Ontario and the Ontario French Language Services Commission.

I should give the reason why I chose both of those. In terms of the French language services commission, it is part of my portfolio or critic area, so I was interested in seeing exactly what it did and how it fit into Bill 8. The other choice was by myself as well, because it was one of issues we looked at and ran on during the campaign. I was interested in seeing that setup as well.

The other two choices were Mr. Breagh's, and I do not know on what he based those choices.

Mr. Chairman: OK. Mr. Runciman or Mr. Jackson, which two? That Review Board for Psychiatric Facilities in eastern Ontario, could that be done when we have done the St. Lawrence Parks Commission? Do you have to go to the facilities in eastern Ontario?

Mr. Runciman: You could do it on the grounds of one of the psychiatric hospitals if you wanted to. You could meet in the boardroom of the psychiatric hospital with members of the review board. You could do it that way. As Mr. Eichmanis said, I do not think it is necessarily a lengthy one.

Mr. Chairman: Would they do Penetanguishene?

Mr. Runciman: Yes. This is to cover all the provincial institutions, but they have separate boards set up for each area of the province. If you talk to one, you are going to get essentially the same sort of functions performed by all of them.

Mr. Chairman: What about for now, then, the Workers' Compensation Appeals Tribunal? That would be interesting. And Ontario Waste Management--

Mr. South: What are the two?

Mr. Chairman: Ontario Waste Management Corp. and the Workers' Compensation Appeals Tribunal. Does that sound all right?

Mr. Runciman: It does not turn my crank.

Mr. Chairman: OK. Which other ones do you want to talk about, then? The Ontario Securities Commission?

Mr. Runciman: Well, from a personal point of view, I guess, because I know some of the things that are going to happen to the review board, I have some concerns there.

The securities commission, I have been advised, is in a very bad state. They have a backlog of complaints over two and a half years now in some of the complaints with which they are dealing. Staff morale is very bad, there is a high turnover rate. I think there are some real concerns about the commission. It has never been looked at by a government committee.

Mr. Chairman: The Ontario Securities Commission? OK. We will do that one, then.

Mr. Eichmanis: As members undoubtedly know, the act is a very complex act. That may be one that will require more than a day, because it is not a simple act; it is pretty complex.

Mr. Chairman: That is fine. We can take two days?

Mr. Jackson: If we need a whole week, a lot of people are going to get upset about that.

Mr. Dietsch: May I make a point? Regarding the St. Lawrence Parks Commission, then, you are suggesting that is not going to be done in the first session. Correct?



Mr. Chairman: Right.

Mr. Dietsch: What we are really offering is what is going to be done in the first session.

Mr. Chairman: Yes. We are picking out six right now, and then we will try to take four from those six, I guess.

Mr. South: What was the second one, then, for the Conservatives?

Mr. Chairman: Psychiatric facilities.

Mr. Jackson: Ontario Waste Management Corp. and the Ontario Securities Commission.

Mr. South: So now we have six.

Mr. Chairman: Would you like to comment on these?

Mr. Eichmanis: No, I was just wondering: If the committee is to do four this time around, then the other two would automatically be for the fall.

Mr. Chairman: That is right.

Mr. Dietsch: Then we pick two more in the fall.

Mr. South: I think we should pick two more now.

Mr. Dietsch: I think we should pick two more now, but I think we also have to drop back from the six and choose the four priority ones.

Mr. Chairman: Yes. Do you want to do that? First, pick the four we are going to do in the spring. Can I give you a suggestion, then, to speed things up? The Ontario Food Terminal, I think, would be a good one to do this spring, and the pension commission; and we could do, maybe, the Civil Service Commission and the securities commission. Is that four?

Mr. South: Are you suggesting now the food terminal would be one, and number two?

Mr. Chairman: The civil service and I think I mentioned the pension commission and the Ontario Securities Commission.

Mr. South: Three, and four is the securities.

Mr. Chairman: Now we will get two on the list for the fall, Ontario French Language Services Commission and the Ontario Waste Management Corp.

Mr. Dietsch: Might I interject a point? You then will not be dealing with the St. Lawrence Parks Commission?

Mr. Chairman: I am not done yet. Yes, I have named the other two that were not added to the first list, and that is the French language services, the Ontario waste management and the St. Lawrence Parks Commission. That is three; now we need one more. Do you want to do the Review Board for Psychiatric Facilities, or do you want to do--

Mr. Dietsch: Not to be difficult, but I am just wondering: It seems to me that the lists, then, are orienting themselves towards the opposition members' lists and not, in fairness, towards the others, if you are going to do it that way.

Mr. Chairman: I want to be fair.

Mr. Dietsch: That is just my point. I think we should be fair.

Mr. Chairman: Yes. Which other one on your list would you suggest for the fall?

Miss Martel: If I can make things easier, I am sure that Mr. Breaugh and I would have no aversion to dealing with the Advisory Council on Occupational Health and Occupational Safety. That would be my choice.

Mr. Chairman: I would not either.

Mr. South: OK, so that becomes a fall one, then?

Mr. Chairman: Yes. Is that four for the spring and four for the fall? Would you read those four now into the record that we have for the spring and four for the fall sitting?

Clerk of the Committee: The spring selections are: Ontario Food Terminal Board, Civil Service Commission, Pension Commission of Ontario, Ontario Securities Commission. The selections for fall review are: Advisory Council on Occupational Health and Occupational Safety, Ontario French Language Services Commission, St. Lawrence Parks Commission and Ontario Waste Management Corp.

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Mr. Chairman: Each end up getting three.

Mr. South: What was the last one?

Clerk of the Committee: Ontario Waste Management Corp.

Mr. South: For the last one in the fall--how about the Ontario Racing Commission?

Mr. Chairman: We already have eight in total. We have four for the spring and four for the fall, now.

Mr. Jackson: You are missing the--

Mr. South: Yes, all right, it is right on the St. Lawrence, so it would be very appropriate.

Mr. Jackson: It is God's country down there.

Mr. Chairman: I guess we should have a motion recommending what the committee has selected.

Mr. McGuinty: Just an observation, please. I am here as a substitute. I have not been privy to any background, but I find it passing strange that we should arrive at priority lists in this, it seems to me,



rather ad hoc way. The only evidence we have here are the dates of the prior reviews of at least five of them, which dates may or may not be relevant. The only one on which anything substantive was commented upon was the securities exchange by Mr. Runciman, so I really do not know what the basis for setting this priority list is. I raise that, not for the purpose of opening up the discussion further, I certainly would support this list, but with that qualification.

Mr. Chairman: When the subcommittee dealt with the procedures, it had been mentioned briefly what you are talking about--that we want to get more background. We want to find out more about these agencies, boards or commissions, before we start looking at which ones we should be dealing with. However, we had to start somewhere, this being a new committee, and we had a list of the 243 when Management Board was here a couple of weeks ago. We have material here to pass out to the members who requested it from Management Board. It just came. Anyhow, your concerns are well noted, and I think the steering committee will certainly take them under consideration.

We should have a motion, then, to proceed with the lists as read into the record.

Mr. Dietsch: Would you please read it to me again. I am debating on one of these and I think I have it right, but I am not sure.

Mr. South: Can I have a few minutes?

Mr. Chairman: Yes, sure.

Mr. South: OK, we have had our caucus.

Mr. Eichmanis: The four agencies to be reviewed in the spring period would be the Ontario Food Terminal Board, Civil Service Commission, the Pension Commission of Ontario and Ontario Securities Commission.

Then for the fall, the agencies would be the Advisory Council on Occupational Health and Occupational Safety, Ontario French Language Services Commission, Ontario Waste Management Corp. and the St. Lawrence Parks Commission.

Mr. South: Do you want a resolution now to accept that list?

Mr. Chairman: Mr. South moves, seconded by Miss Martel, that list be accepted. All in favour? Opposed?

Motion agreed to.

Mr. Chairman: Have you handed out that material, clerk?

Mr. Eichmanis: If I may just indulge the committee for a moment. The next process will be that I will have to go and prepare the material for the review, which will consist of reviewing everything that is available on an agency and, I hope, there will be time enough for me to interview the chairman of the agency to ask more particular questions.

If at any time members of the committee have a specific concern or interest with respect to a given agency--could you let me know what that is, so that I can go into more depth on that particular matter with the agency, and bring out the information that you will require in a review?

By and large, obviously, I cannot touch on everything. I do a broad kind of overview of the agency and how it works. I look at the structure and organization, its operations, its accountability relationships, its finances, and then I do an issues for discussion section at the back of the report, which consists of matters that I have gleaned to be of a problem nature, possibly, or matters that could usefully be discussed, but those are my perceptions. They may not reflect yours, so that if you do have a particular matter with an agency that you want me to pursue a little more thoroughly, then, if you could let me know, I will do so.

Mr. Velshi: May I say something on that, please? Do you want us to tell you now what areas, do we put it in writing or just give you a call?

Mr. Eichmanis: Just give me a call. I am at 965-0477.

Mr. Chairman: The job at hand is for you now to prepare extensive research for these. The other item of business, I presume is--I have a tentative list here that I got from the whip--March 7, 21 and 28 is a tentative list that I have for meeting.

Mr. South: What days are those?

Mr. Chairman: That is the week of March 7, the week of March 21 and the week of March 28. We will be meeting three days a week, Tuesday, Wednesday and Thursday.

Mr. South: Wait a minute. Do we have any choice?

Mr. Chairman: Not unless you want to extend it.

Mr. South: No, but what about Monday, Tuesday, Wednesday, rather than Tuesday, Wednesday, Thursday?

Mr. Chairman: I think most committees meet in the middle. However, we can discuss it at a future date, once we get near that and see if there are any changes that the members would like.

Mr. Dietsch: When that happens, when you set out your guidelines for review, if, for example, it was going to take you a little bit longer to review a little more in depth--say, through your review, something else turned up and you wanted to go a little bit more in depth--is the latitude there to extend the period of time, or how does that happen?

Mr. Chairman: That happens when you are doing the review. Sometimes you will not finish with somebody on a certain day, when you are interviewing them as a witness, and it can go over to the next day. Sometimes it can be shorter than anticipated, so it varies from day to day.

Mr. Dietsch: The reason I asked the question is that if we were, for example, meeting on Monday, Tuesday, Wednesday, we then could extend it into Thursday, if the need arose. I guess that is why I asked the question. It is difficult to extend it into Friday, recognizing that some members have travel time, etc.

Mr. Chairman: What the House leaders usually try to adopt is a policy of Tuesday, Wednesday, Thursday, and it has been a policy for quite some time. However, the committee can change it, if it so desires. Maybe there are witnesses who can come on Monday who cannot come at another time, so that



it would be Monday, Tuesday, Wednesday. We can vary it accordingly.

There is one thing that we have to plan on--and that is the budget was approved. Included in that budget were provisions to go to Boston and Washington. We should be directing our clerk to proceed to make arrangements with the legislatures there so that we can get to visit.

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Mr. South: We should think in terms of the winter break when we are picking the time we are going to travel, because I would say that is the worst week to travel.

I wonder if we could have an expression now on the preferred dates. I would prefer Monday, Tuesday and Wednesday. Appreciating what you said, why do we not have a vote? Maybe nobody else has a strong feeling about it. Personally, I would prefer Monday, Tuesday and Wednesday.

Mr. Chairman: Personally I prefer Tuesday, Wednesday and Thursday because I usually have office appointments in my riding Monday mornings.

Mr. Jackson: The other problem, of course, is that you have to leave your families on a Sunday to get down here and, from experience, that is not always to be encouraged. Since Sunday is travel day for some of you, members of the committee who live the furthest would have to leave their families on Sunday. It does not affect me, but I certainly would not want it to pass without being sensitive to the other members of the committee.

Miss Martel: I would prefer Tuesday, Wednesday, Thursday, actually on the reasoning that the chairman gave, because my office days at that point will be Monday and Friday so that I will only have a span over the weekend when I can not see people. I would prefer keeping it the way it has been for that reason. The travelling does not bother me much that way.

Mr. Furlong: I prefer Tuesday, Wednesday, Thursday.

Mr. South: Tuesday, Wednesday and Thursday, Mr. Chairman is the consensus.

Mr. Chairman: The other thing I want to say then is that if we meet for two weeks--the week of March 7, then there is the school break for a week, then we meet the week of March 21--I would like to suggest we travel on the last week. A lot of new members will then have an opportunity to know the procedure we go through here when we do these four agencies and it would give them some background. Then, on the last week, we could travel and find out how the others operate for a comparison of how we have done it and how they do it.

Mr. Jackson: Can you run that by us again?

Mr. Chairman: The last week of March would be the week of travel.

Mr. Dietsch: Refresh my memory, where is spring break in there?

Mr. Chairman: The week of March 14. It is my understanding that no committees are sitting that week. We sit the week before and the two weeks afterwards.

Mr. Velshi: We are not meeting in January or February at all. We are

just looking at March, is that right?

Mr. Chairman: Not this committee.

Mr. Velshi: Is there any particular reason why we are missing January and February and going into March? That is when the House is sitting again.

Mr. Chairman: One of the reasons is to give our researcher a couple of months to do all the research that he has to do for the US material. It takes a long time. That is the main reason.

Tentatively, that's the way it is at the present time.

Mr. Dietsch: These times that we are trying to intertwine with some of the other committees that are sitting too, were allocated by the House leaders, were they not? That is my understanding.

Mr. Chairman: That is my understanding too. I have a proposed list of when they are sitting, but it is not definite. I understand the House leaders will probably have a motion today or tomorrow in the Legislature authorizing when committees will sit.

Mr. Velshi: They could conceivably change?

Mr. Chairman: Yes, but that is tentatively the way it is.

Miss Martel: If that is the end of the discussion I will move that we agree, as a committee, to travel the last week, so that the clerk can make those arrangements as soon as possible.

Mr. Chairman: Miss Martel so moves. Any discussion on that? If not, all in favour? Carried.

I presume that in that motion they would be instructed to make the necessary arrangements with those legislatures for the visit and to make travel arrangements.

Any further business?

The committee adjourned at 10:46 a.m.



STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO SECURITIES COMMISSION

TUESDAY, MARCH 8, 1988

STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)  
VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)  
Black, Kenneth H. (Muskoka-Georgian Bay L)  
Breaugh, Michael J. (Oshawa NDP)  
Dietsch, Michael M. (St. Catharines-Brock L)  
Furlong, Allan W. (Durham Centre L)  
Lipsett, Ron (Grey L)  
Martel, Shelley (Sudbury East NDP)  
Runciman, Robert W. (Leeds-Grenville PC)  
South, Larry (Frontenac-Addington L)  
Velshi, Murad (Don Mills L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh  
Ray, Michael C. (Windsor-Walkerville L) for Mr. Dietsch

Clerk: Arnott, Douglas  
Clerk pro tem: Mellor, Lynn

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Securities Commission:

Beck, Stanley M., Chairman  
Pascutto, Ermanno, Director  
Vaccari, Dominic, Deputy Director, Administration



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday, March 8, 1988

The committee met at 2:10 p.m. in room 228.

AGENCY REVIEW  
ONTARIO SECURITIES COMMISSION

Mr. Chairman: I call the meeting to order to review the Ontario Securities Commission. We have Stanley Beck, who is the chairman. Perhaps you would care to introduce the people who are with you for the record. Then I presume you have a presentation you would like to make to the committee.

Mr. Beck: On my immediate left is Charles Salter, the vice-chairman of the commission. On my immediate right is Ermanno Pascutto, who is the director and chief operating officer of the commission. On his right is Dominic Vaccari, who is head of finance and administration. On his right is Elizabeth Nash from the corporate finance department, who has helped us put together some of the material members of the committee have before them.

Perhaps I will just make a brief opening statement very quickly that would run together the history, the mandate, the structure and some of the major happenings, if I can use that term, at the commission today. The Ontario Securities Commission has a venerable history, really dating back to approximately 1931 or 1932 when the Honourable George Drew, interestingly enough, was the first chairman. The modern Securities Act really dates from 1968 from a report of the then chairman, John Kimber. As a result, we have the 1968 Securities Act which is the first comprehensive Securities Act in Ontario and indeed the first comprehensive Securities Act in Canada.

By "comprehensive," I mean that it dealt with the registration of those who wished to sell securities to the public in Ontario. It dealt with such matters as insider trading; with the regulation of takeover bids; with timely disclosure, which is the disclosure that companies, wishing to go public and list on the Toronto Stock Exchange, must make of important events to the public so that the market can be fully informed; financial reporting; standards for financial reporting; interim statements, which are quarterly, half-yearly and yearly audited statements; plus the investigation and enforcement powers, very extensive powers--I will refer to those in a few moments--that were given to the commission.

At the same time, the commission itself, the quasi-judicial group, was restructured and the staff of the commission increased. In 1978, there were substantial amendments, particularly in the takeover bid area, to introduce greater equity into that entire area in the market and to ensure as far as possible that minority shareholders were treated on an equitable and equal basis with majority shareholders in a takeover bid.

Just this past year, we again have revised the takeover bid rule. It is a very fast-changing area and one in which we have to run quite quickly to keep on top of in terms of legislative change. We also revised our insider trading rules to make them more comprehensive and to increase quite markedly the penalties for insider trading. At the same time, the number of

commissioners was increased from nine to 11, with the possibility, subject to approval of Management Board, of having a second full-time vice-chairman.

With respect to the mandate of the commission, and I have already made a brief reference to that, in the first place, everyone who wishes to sell securities in Ontario--that is, to deal with the public--must be registered with the commission. Registration is a process by which, through co-operation with both domestic and international police forces, we can do a complete check on those who want to sell to the public in Ontario. At the same time, categories of dealing with the public are established. Whether it is an investment dealer, a mutual fund dealer, a securities dealer, they must be registered with the commission. Appropriate rules and standards are set for those firms. Directors and officers have to be listed with us and pass appropriate exams.

With respect to the sale of securities, that is what we call the primary distribution of securities. By "primary distribution," I mean if Imperial Oil, for instance, wishes to do a new issue of equity and sell 20,000 or 30,000 new common shares to the public, that is what we call a primary issue. It must file a prospectus with the commission giving what we call "full, true and plain disclosure" with respect to all facets of the operation of the company and its current financial position with audited financial statements, and the directors and the underwriters of that issue sign a certificate, for which they are criminally and civilly liable if there is misdisclosure or nondisclosure of material facts, attesting that there is truly "full, true and plain disclosure."

Of course, once securities are issued they are then traded in what we call the secondary market. If I own shares of Imperial Oil, after I hold them for a year I may wish to sell them to Mr. Salter, for instance. I do that by trading through a broker who is licensed with us and is most likely a member of the Toronto Stock Exchange, or if the security is not listed, it is traded on the over-the-counter market, now regulated through what we call COATS, the Canadian Over-the-Counter Automated Trading System. Of course, the trading of securities in the secondary market is a complex matter and we, along with the Toronto Stock Exchange, have oversight of that market also.

One of the newer facets in the investment industry--not so new now, I suppose; 20 or 25 years old, but very large today--is investment in what we call investment funds or mutual funds, sometimes referred to in the English parlance as unit trusts. That is a pool of securities and one buys a share in the mutual fund and the professional advisers of the fund choose the securities that underlie that fund, so that an individual is buying professional management. Investment funds are the fastest growing area of the securities business today.

Apart from registration, sale of securities and trading of securities is the whole investigation and enforcement side which keeps us very busy indeed. We get complaints from purchasers of securities. We get complaints from those who are licensed to deal with it. We ourselves keep abreast of what is happening in the market and in the financial press, and begin inquiries and investigations ourselves, some of which result in disciplinary action before the Ontario Securities Commission and some of which are referred to the Attorney General's department and result in criminal action being taken.

It is a very important part of what we do in regulating the securities markets that we do not do it alone, that we do it in conjunction with what we call the self-regulatory organizations that are recognized by us and given, in



some cases, co-ordinate authority with us. The main self-regulatory organizations are the Toronto Stock Exchange, which is recognized as an exchange under the act, the Investment Dealers Association of Canada, to which the major investment dealers belong, and the Investment Funds Institute of Canada, the institute that runs the mutual funds.

IFIC, as we call it, does not have full self-regulatory organization status; none the less, it is growing into that. What we do is delegate to the SROs some of the initial disciplinary authority over their members, some of the audit authority in terms of a financial check on their members and also a compliance check to see that the rules are being complied with. To fully police the securities industry, no securities agency anywhere in the world can really get along without a high level of co-operation from self-regulatory agencies.

It is just too broad, too complex, too fast a business from minute to minute, appreciating that you are dealing with trading markets. Our relationship with the self-regulatory organizations and their accountability to us, as well as, I am frank to say, our dependence on them, is critical to understanding and appreciating how the securities markets are regulated, not only in this province but elsewhere. We also have responsibility for the Commodity Futures Act and the Toronto Futures Exchange on which futures and options are traded.

Turning briefly to the structure of the commission, the commission is a bit of a hybrid as far as administrative agencies are concerned. It is highly independent in its operations. As the chairman of the commission, I report directly to the minister and do not report through the deputy, although in working terms I clearly have a close working relationship with the deputy. I report directly to the minister. There has by tradition been a very hands-off approach as far as the Ontario Securities Commission is concerned. It is the master of its own operations in terms of the market and policing and watching the market.

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On the other hand, in structural terms, in what I might call internal operations, the Ontario Securities Commission is a schedule 1 agency subject to the Manual of Administration, subject to the rules set by Management Board and subject to all personnel and administrative policies. On the one hand, operationally it is independent, and on the other hand, it is very much a part of government operations and subject to the rules and procedures in internal--what I would refer to as structural--operations.

The commission itself, by which I mean the group that carries out the quasi-judicial function of holding hearings and setting policy, consists of 11 commissioners, only two of whom are full-time appointments; that is, myself as chairman and Mr. Salter as vice-chairman. As I have indicated, until the amendment of the legislation last year, we were nine commissioners. We now have authority to go up to 11, although we remain at the number nine at the moment. We will be adding two more over the next year.

As I have indicated, the commission itself is a quasi-judicial tribunal which hears cases that come to it directly from applicants or are brought to it by the commission. It sets the policy for the markets and monitors the operations of the commission. It meets as a full commission every Tuesday to deal with matters that come up.

The staff of the commission, which is under the guidance of the director as the chief operating officer, consists of some 150 men and women divided in the structure I have indicated; that is, in corporate finance, in enforcement, in the capital markets division, in finance and administration and the commodity futures branch.

As to where we are today and the position of the commission and the position of the markets, I suppose it is not too much to say that the greatest single change that has taken place in the history of the capital markets in Ontario and indeed in Canada has taken place over the last year. From 1971 until June 30 of this past year, there were rules in place that limited foreign ownership to protect the Canadian nature of the industry and to allow the Canadian industry a chance to grow.

We realized over the last couple of years that markets were truly international, that neither provincial nor national borders were any barrier to the free flow of capital, that issuers, including government, whether it is the government of Ontario or Ontario Hydro, and Imperial Oil, were scanning the world for the best deal. They buy in the Eurobond market, in the yen bond market or in the US dollar market, or they will finance in Toronto or Montreal as the case may be.

That being the case, we realized that Toronto had to open its doors to foreign ownership and to competition because the business was simply moving away from us, that New York and London, and Tokyo to a lesser extent, were wide-open markets and that Toronto, as the centre of the financial industry in Canada, either had to open its doors or risk losing its place, not only internationally but possibly to Montreal, as the Quebec government some three years ago made the decision to open its market.

We now have a new national and international dimension to the industry. International firms are here and registered with us, whether it is the major Japanese, American or United Kingdom firms. The federal government at the same time has allowed the Canadian chartered banks and the federal trust and insurance companies to come into the securities industry, almost in an unfettered way. That in itself has led to a major restructuring since June 30. We ourselves are responding to that in terms of our registration requirements and in terms of the very increased mandate we now have with respect to the new entrants.

In terms of major events that at the moment we have on our plate, there is a new junior resource policy which has just come into being and which we think is going to be very successful. There is a new mutual fund policy which we worked out on a national basis for the operation of mutual funds.

We have a major current investigation under way with respect to what we call front-running; that is, institutional traders know their institution, for instance, is going to place an order for \$50 million of Imperial Oil and know, as a result, the stock of Imperial may blip up, and they take advantage of that knowledge to trade ahead of the institution in their trade. I only mention that because it has been in the press and we have had to make a major announcement of it. The fact of it became public because it is such a major and widespread investigation. Ordinarily, we never comment on an investigation, because it simply might be unfair to the individual or companies involved since an investigation may come to nothing and we take no action. So invariably we say, "No comment," if we are asked if there is an investigation.



Another major matter is the crash of October 19 and its impact on the market. I am pleased to say the Toronto market reacted very well in terms of the trading systems on the Toronto Stock Exchange and the ability of the firms to survive what was a very severe crash. Some of the firms had to have money injected by their shareholders or by outsiders, but they all survived. In terms of any firm going out of business as a direct result of October 19, I can say none did. Certainly, a lot of money was lost by both small and large investors, but in terms of stability of the structure of the industry, it was very sound.

Since then there has been the major and unfortunate matter with respect to Osler Inc., which went under and which we placed into receivership some two months ago now. We have an investigation under way with respect to that. The receiver, Clarkson Gordon, is in there and that is being wound down, although retail customers have been fully protected, as indeed have institutional customers. There have been no direct losses taken by investors as a result of Osler, although there certainly will be losses taken by some of the large institutions before the whole thing is wound up.

You may have read about National Business Systems. If you were watching Venture on CBC Sunday night, you might have seen a report on National Business Systems. Again, that is something that is very unfortunate but which in some ways we are proud of in the sense that we had reports that something was not right with the financial reporting in National Business Systems. They were about to do what we call a corporate buyback of some \$45 million. Our accountants started working on the matter at noon Friday and received material all over the weekend, including audit material from the United States, and worked literally around the clock from Friday at noon until Wednesday at noon.

We called the principals and their fiscal agent in and said the corporate buyback could not go ahead, that either they were going to put in some external auditors or we were going to put them in, but this called for an investigation. In fact, as a result of that, the senior officers and senior financial officer resigned. The Hees group has come in on a rescue operation, and it does look like there is the possibility of a major financial fraud there, which we were able to bring to an end.

Internally, we have had a major information systems and technology study done by Touche Ross. They recommended a sweeping overhaul of our information systems. I am pleased to say the government was very supportive of it and that Management Board of Cabinet has approved the entire implementation, some \$8 million to be spent over the next five to six years to update our systems and enable us to do the job we have to do.

With respect to budget, I guess 18 months ago now or one year ago, we revised our fees. Our fees had not been revised since 1968, which struck me as extraordinary. We revised them to become self-funding. Our revenues have moved up from about \$1.5 million to about \$8.7 million in this past year as against a cost of about \$6.4 million.

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Mr. Vaccari just tells me that in the current year our revenues will be about \$12 million, which is a reflection of the international opening. I would like to say all that flows into commission coffers. It does not; it flows into the consolidated revenue. We, like all other agencies and departments of government, have to make our case for our budget.

Mr. Jackson: So that is where you get your \$8 million from.

Mr. Beck: That is where we get our \$6.3 million from.

Mr. Jackson: That is where you get your \$8 million for your communications.

Mr. Beck: That is right; that is where we get the \$8 million.

Mr. Jackson: Over five years.

Mr. Beck: You have quite rightly discerned that this was my main selling point, that we are in a surplus position and government can afford to give us the \$8 million.

Mr. Chairman: Have you any further remarks?

Mr. Beck: That is my opening statement.

Mr. Chairman: Thank you. We are open for questions.

Mr. Black: Mr. Beck, I would be interested in having a comment as to the impact you think the identification of Montreal and Vancouver as the major financial centres in Canada will have on the securities industry in this province.

Mr. Beck: I do not think, sir, that it will have any impact on the securities industry as such. It relates exclusively to banking and then only to a very narrow area of banking in terms of offshore transactions. Any country really has only one major financial centre, even a country as large as the United States. New York is the financial centre. And so it is in Canada. You can really have only one financial centre. The international financial houses, the domestic financial houses and the domestic banks have clearly identified that as Toronto, and Toronto is where it will be. There is almost no amount of government legislation that can really impact on that operational reality. I see no impact, frankly.

Mr. Black: Could we feel as confident about free trade and the impact or lack of impact it may have on the securities industry?

Mr. Beck: On or opening on January 30, the change of the rules really beat the gun, if you like, on free trade. We said, in effect, "We are open," although we did reach an agreement with the federal government that the coming in of foreign firms was a federal matter, in terms of being allowed in. The federal government was quite rightly worried about reciprocity, that is, equal treatment of Canadian firms, particularly in the Japanese market and the American market. Some of that negotiation is still going on. But I think, by and large, free trade is a reality in financial services. We have it here now, and it is essential to us.

Just to come back to the bank question for a moment, I suppose the only concern about the bank question, and it is one that has been articulated, is it does not send the right signals to international markets. As I say, you can really have only one major international financial centre. If the federal government is sending some signal about Montreal and some signal about Vancouver at the same time the major firms are coming to Toronto, there is that possibility of confusion because people are not all that well informed about what happens in any particular country. The signals that a federal



government sends are very important. There is concern about that, but not so much on the actual impact side.

Mr. Runciman: Mr. Beck, you brought up Osler. I do not know how much you can say about that at this time, but I am interested in hearing a bit about the process in respect to Osler. I gather from press reports that OSC became involved in January. I do not know whether that is correct. I would like you to give us perhaps a bit of history and why we have got into this situation we are in now and if the securities commission should have been perhaps more diligent with respect to that firm.

Mr. Beck: Right. I will try to deal with that, and perhaps I will ask Mr. Pascutto, who has been involved with it also, to comment. It is not correct, as the press says, that the OSC just got involved in January. Let me go back to what I said in my opening statement. All the companies registered with us that are members of either the Investment Dealers Association of Canada or the Toronto Stock Exchange fall under one of the other audit jurisdictions, so they have to choose their auditor from a panel of auditors that are approved by us. Apart from that, the TSE has its own auditors, as does the IDA, and they go in and do spot checks. Apart from that, there are monthly reports that the firms themselves must send in.

One day, I guess it was late in the fall, I received a telephone call from one of the vice-presidents of the Toronto Stock Exchange. It was the same day that he was informed there was a problem, that the auditors had turned up a serious problem in Osler and it was a problem of the nature that might endanger the firm. From that moment, we kept in very close communication with the stock exchange and had daily, and even two and three times a day, reports from the exchange as to what was happening.

You may ask, "Why did not the Ontario Securities Commission do something or move in?" We are perfectly satisfied that the auditors, both internal and external that the exchange has, are capable of doing that job and of seeing what is required. Indeed, within a couple of days, Clarkson and company--that is, the receiver side, although not as a receiver, rather as a special investigator--were put into Osler's to see what had to be done and, in effect, to run the company.

We were in close contact with the exchange all the time. I myself was in attendance at a crucial late evening meeting at the exchange, when it was determined how much money had to be put in to protect the retail accounts and what the arrangements were going to be for putting in that money. When it became clear that a receiver was needed, then the OSC moved in because we are the only ones who really have the power to go to court and ask for a receiver, which we did, and which was the same Clarkson and company that the exchange had put in. We then issued what we call section 11 orders, which are investigation orders, to go along with the receivership, and personnel from our enforcement branch are there working along with Clarkson and company.

So we have been involved from day one in the situation and it has been a matter that has been worked out very effectively, in my view, because there was a possibility for serious exposure, multimillion-dollar exposure, for retail clients, which has been avoided.

You may well ask, and I will be frank to say to you we asked ourselves, how did it get this far without being discovered? Off the record, a lot of the transactions that took place--

Mr. Chairman: There is nothing off the record.

Mr. Beck: OK. A lot of the transactions that took place were simply what we call off-balance-sheet transactions" that would not have shown up in an audit. They are transactions that were simply not recorded with one major client. Since we are on the record, I think it will suffice it to say, but you will appreciate what it is I am saying, when I say the Ontario Provincial Police and the Ministry of the Attorney General are now part of the investigation also.

Mr. Runciman: In essence, what you are really saying is that there was hanky-panky, and there is no way the OSC can be on top of that situation in an ongoing way and there is no way the commission could have been made aware of the situation at an earlier date. You talk about the auditors getting into this and the TSE bringing to your attention in the fall that there was a problem. I am just wondering why this problem, through the TSE auditors, was not brought to your attention at a much earlier stage. I guess I do not understand the audit function, why it can be detected in the fall and could not have been detected in the spring.

Mr. Beck: As to why it was detected in the fall, it was detected because they were in capital trouble. A firm is always checked as to what we call its net free capital, the capital it has to have to operate, given the nature of its business.

Mr. Runciman: They went to borrowers.

Mr. Beck: That is right, and the balloon went up because they were simply under margin. They were under capital.

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Your first instinct is certainly right. It looks like a troublesome situation there and one, as I say, that was off-balance sheet and the police are investigating as well. We intend, internally, to reconstruct the audit of Osler, that is, to go back two years once the receivers are out, because we have all the documents, to look at the audit that was done and to ask ourselves if procedures might have been put in place that would have turned this up earlier--in other words, to ask ourselves, how good was the audit that was being done and that we relied upon.

There is a new document out called The Treadway Commission in the United States. Commissioner Treadway was one of the accounting commissioners on the Securities and Exchange Commission dealing with fraud and the detection of fraud, which is one of the most difficult areas in accounting. We are looking at that to see if we can identify earlier danger signals of that sort of thing. It is not too hard to detect when a company is in trouble in a business sense and the capital is being run down. That is detected all the time and mergers are made. Marriages are made, if you like. Money is put in and the company is saved. It is very difficult to detect what you call hanky-panky, extremely difficult, but none the less, there are signals and detecting them is a new thing for auditors of financial institutions, not just securities firms but trust companies, banks and credit unions. That is a whole new world in the auditing game.

You are quite right. The question to ask is, is there some way we can



identify it a little earlier? We hope to look at that question. It is a tough one.

Mr. Runciman: It ties in with perhaps one of the major reasons that the committee wanted to meet with you this week because some concerns have been expressed about backlog, etc., and hopefully we will get into that a little later on.

Mr. Beck: Right.

Mr. Runciman: You mentioned no significant losers in this except perhaps some of the big institutions. I was reading where there are unsecured creditors. Clarkson Gordon is saying it is about \$65 million. We are going to recover about \$2 million. Who are the losers in this thing?

Mr. Beck: The loser, it looks like, is one major credit union, Canadian Co-operative Credit Society, which is the Ottawa clearing house for provincial credit unions. It was doing a lot of the trading in the particular security, Treasury bills, with Osler. It very much looks like CCCS will suffer a very major loss.

Mr. Runciman: I know it is a major loss, but what is the impact going to be on them? Is there any assessment of it at this stage?

Mr. Beck: Yes. Michael Mackenzie of the new office of the superintendent of financial institutions has had his auditors in there and I think they are satisfied that CCCS is viable.

Mr. Runciman: It will survive.

Mr. Beck: It will survive.

I think another important point to note is that the national contingency fund, which is the industry's own sort of self-insurance agency, had to come up with about \$12 million at one time to pay the Bank of Montreal which held as collateral a lot of margin securities in big blocks, many of which were Vancouver Stock Exchange securities which there was no point in trying to sell. You could not sell them at anything like the market and if that took place and if the Bank of Montreal had placed Osler into bankruptcy rather than allowing an orderly receivership and wind-down, then retail clients may well have been at risk and there might have been a lot of money lost. The industry itself initially came up with \$12 million and now it looks as if it is really going to cost closer to \$19 million to \$20 million.

Again, the industry, to its credit, is self-insuring in that way. It made a call on its members over the last month for some \$15 million and they all ponied up to replenish the fund.

Mr. Runciman: Is the national contingency fund tied in with this in any way?

Mr. Beck: It is tied in with it. Because it is self-insurance, the national examiner, who is an auditor, is tied into the audit that is done. If there is any problem, then the national examiner or the contingency fund has to be told, so that the firms have all the reason in the world to have very tough audits and to be tough on themselves, because if they do not, they have to reach into their pockets. As I say, within the last month they have had to reach in for \$15 million as a result of the Osler matter.

Mr. Runciman: Some other members may have some questions on Osler. I will not take much longer and yield the floor. I appreciate your frankness with respect to this. I go back to an earlier comment you made that traditionally when a complaint is lodged with the commission, your position is to say, "No comment." I guess because this is a very public matter, such a significant amount of money involved, that there is a different policy approach.

You may be aware that I contacted your office some time ago about another complaint which involved the spouse of a cabinet minister in the Ontario government. The initial reaction, of course, was they simply would not even acknowledge that the complaint was filed or that the commission was looking at it. I am just wondering about that approach, if indeed it is an appropriate one--to not acknowledge at least that a complaint has been filed and is before the commission, and has been before the commission for X months or years. I am just wondering about the rationale for not even acknowledging the fact that a complaint is before you.

Mr. Beck: I appreciate your question. It is a very difficult one for us, because most of the questions come from the columnists for the financial press. It is very competitive out there now in the press, and gossip columns--if I can call them that--are after us all the time about X, Y and Z. "Is this being investigated and is that?" The potential for damage to individuals and firms--and all they really have in this industry is their reputations--is very high. Even to acknowledge an investigation and how the press handles that is something we are very leery of doing.

Sometimes we cannot guard it; it gets out. We are a big agency, we have to go out and ask questions and get documents; so the word gets out. Sometimes we are forced to say something. I think the better part of wisdom is that if at all possible not to say anything until such time as an investigation is completed, and you do not say anything unless proceedings are going to be taken. It is troublesome. We are under a lot of pressure.

Mr. Runciman: In terms of dealing with a complaint, you have a certain case load, and I do not know how extensive that is.

Mr. Beck: Right.

Mr. Runciman: You may want to talk about your case load and what the average duration is in terms of the initiation of the complaint and resolution. Do you have the statistics on that?

Mr. Beck: I do not think we do. Perhaps I will let the director answer that one, since it is a hard one. I will turn it over to him.

Mr. Pascutto: I was afraid you were going to do that.

Perhaps I should start by saying that we have been having some concerns about the operational efficiency of the enforcement branch of the commission. At this point it is over a year ago now we started a review of the structure and efficiency of the branch.

Mr. Runciman: This is an in-house review?

Mr. Pascutto: We retained Peat Marwick, Lindquist and Holmes, and really we were looking at the Lindquist and Holmes side of it because of their expertise in forensic accounting. That is similar to a lot of the work that



our group would be doing. Because of the length of time it takes to go through the tender process and to actually have the review conducted, I think the process started almost 18 months ago. We actually got the report from Lindquist and Holmes last summer. Since then, we were set back a little further because we lost the head of that branch. We lost all of the legal staff in that branch to the private sector and other sources because of our inability to compete in salary dollars. I personally had to take over the operation of that branch last summer in addition to my responsibilities as director. I was replaced by our associate general counsel in the fall, and we still do not have a permanent head for that branch. We should be back up to complement in terms of the legal resources in that branch in about another two months, but even at that stage, none of the personnel will have more than about a year's experience with the commission.

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As I said, we have been trying to conduct this review of the efficiency of the branch. As recently as this week we were working on the final proposal. Over the last few months we have been discussing it with the staff of the branch to get their input to try to finalize it. We hope to have it finalized in the next week to set up a new structure.

The reason for going into this background is to indicate that we have not been happy with the length of time investigations have been taking. Some investigations, depending on the amount of urgency to them, where investors appear to have lost money or where there appears to be an active or potential fraud in the works, get a lot of attention.

If there has not been a particular reason, an urgency to a situation, we have a number of files in the works that are backlogged several years. That is one of the things we have been concerned about which we have been trying to address.

We do not have statistics about how long the average case is taking. We are aware that we had a significant number of cases that seemed to be dragging on for an inordinate period of time. As I said, we are trying to address that problem. Having said that, on the other hand, there are a number of cases that simply take many, many months or even years to investigate. The chairman mentioned the front-running investigation that has attracted some attention. That case has been in the commission now for a year. We have been working on that, and we have been devoting substantial resources to it, and I doubt that it will see the light of day for some time to come. Some investigations simply take a very long time to complete.

Sometimes investigations are not pursued as efficiently as they might be. Other times, people are simply taken off investigations they are pursuing in order to deal with urgent matters such as the National Business Systems case or the Osler Inc. matter. The Osler matter has several of our people working full time, which means that for the last two months and probably for the next several months they will neglect the rest of their case load.

Mr. Runciman: I appreciate the problems you are confronted with. I know statistics can be deceiving, but you should have some idea of how many outstanding cases you have that are over a year, two years or three years. Those are the kinds of figures that you should be able to provide us with.

Mr. Pascutto: No, excuse me. Let me try to respond to that. We are aware of the number of investigations we have. We are aware of the length of

time that each investigation has been open, and we can certainly provide to this committee a breakdown of the investigations, not by name but in terms of the length of time they have been open. We can provide that to you probably tomorrow, if you would like that.

Mr. Runciman: I think that would be helpful. I yield the floor for a while.

Mr. Chairman: OK. Mr. Ray is next. I have one question I want to pop in here. What has the commission done to prepare for the deregulation of the securities industry?

Mr. Beck: Deregulation is a word that has come into our vocabulary, largely from Mr. Reagan's world. We are not deregulating the securities industry. We are reregulating it, if you like, in terms of the new entrants that I have talked about, the banks, the trust companies and insurance companies coming into the business, those institutions wishing to use their branch networks to sell securities, so there is very significant change in our regulation. But I am frank to say I would not categorize it as deregulation. It is reregulation, if you like, but it is not deregulation. It is not getting any easier out there.

Mr. Chairman: Has there been a lot of influx to Ontario from the United States, or investment from the US into Ontario in securities?

Mr. Beck: By investment you mean--

Mr. Chairman: Takeovers; buying trust companies.

Mr. Beck: Cross-border?

Mr. Chairman: Yes.

Mr. Beck: Not all that much. In fact, there is now a significant amount of Canadian merger and acquisition activity taking place in the United States. I cannot think of the last major takeover which was by an American firm of a Canadian firm. You have Gulf being bought back from its Gulf US subsidiary. I suppose Amoco-Dome that is now going on in Calgary is clearly an American takeover of a major Canadian asset, but that is in sort of a distress situation. People were invited in, really, to bid on that. Apart from that, I would be frankly hard pressed to think of a major US takeover in the last two to three years, but I can think of many Canadian ventures, including Mr. Campeau's current one in the United States.

Mr. M. C. Ray: My question really is one of the confidence of the public in the securities industry at this time: concern over Osler, insider trading and the takeover situation where many people are suffering financial loss, at least in the United States, maybe more than here.

How do those problems all relate to what you alluded to earlier, your delegation of authority to self-regulated bodies like the Toronto Stock Exchange, and to the role of the Financial Disclosure Advisory Board, if it does have a role?

Mr. Beck: Let me deal with the first point. If I understand what you are saying, is it, "Is the public losing some confidence in the securities industry, and are people going to put their dollars in the bank rather than investing them in the market, which channels back into productive investment?"



That is a real concern. When you have an event like October 19, coupled with all the publicity that you had from Wall Street with respect to the insider trading scandals, and then you have a major failure like Osler, followed by National Business Systems, it is bound to have an impact on the public perception of the securities industry and the safety of markets; whether that is where one ought to be putting one's hard-earned dollars. I think there is that concern.

All one can do is look at the rules and regulations and try to be as efficient and effective as possible. It is easy to lose perspective. You have to keep in mind that we have just finished five years of the greatest boom market in history, where people were making lots of money, and these things do not last for ever. The bubble got too big. It got way out of proportion, and it broke on October 19.

These things go in cycles, so investors will stay home for a while. They will keep their hands in their pockets. But it will turn around in a year or so, and they will begin to take their hands out of their pockets and they will be back.

We do the best job we can. We go after people and we prosecute them and some end up in jail.

Mr. M. C. Ray: But are our disclosure laws really adequate? The thing I am intrigued by is that the advisory board does only what it is asked to do by the commission.

Mr. Beck: Right.

Mr. M. C. Ray: If you never ask them to do anything, then we are not going get any advice.

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Mr. Beck: The disclosure board is probably a bit of a misnomer in this way, but it is really there with respect to accounting advice. When there is an accounting problem we ask the board for its opinion, and then we meet with it twice a year to discuss a broader range of reporting problems.

We review and update our disclosure constantly. We have a major project under way now, which we will publish for comment within the next four to eight weeks, on what we call Management Discussion and Analysis, MD&A, which is a major innovation, a move forward.

Mr. M. C. Ray: Is disclosure enough?

Mr. Beck: In some ways, without being facetious, it is the only game in town. What you have to rely on is the greatest possible amount of disclosure backed by as effective an enforcement vehicle as you can have, but no regulatory agency would ever have enough people to look at every company, every investment vehicle that comes to market. You have to rely on self-regulation, integrity and disclosure backed up by as effective an enforcement as you can have. We are the backup, but we appreciate that we are only a backup.

Mr. M. C. Ray: But I see it in the context of the financial press, which says we have never demanded what the Americans demanded in terms of disclosure and what we have demanded has been forced on us by more progressive

disclosure requirements in the US, and they have their problems. I do not know how true that is.

Mr. Beck: Yes, there is a certain truth in that. The amount of detail of disclosure required in the American market is greater than what we require and indeed what any other market in the world requires. We take a look at it. I do not think we think all their disclosure is really required. It is voluminous paperwork that only very sophisticated analysts can make any sense of, but we do look at what they do. There is no question about that. They are a much bigger market with a much bigger national securities commission. In many ways, they are the best in the world, but I think we do a very effective job.

I think the real import of your question is: Are we doing enough? Is there enough disclosure out there? I am satisfied that the disclosure we ask for is adequate and, in depth terms, is exactly the same as what they get in the United States.

Mr. M. C. Ray: And it would not make any difference on these recent cases. How about the other thing? We look at the Canadian situation. You say you depend on self-regulated bodies. The public looks at that in the light of the recent problems at the TSE and the appointment of a vice-president and say, "How good is that as a self-regulated institution if it cannot--"

Mr. Beck: I understand what you are saying, sir, but in fairness, the TSE and the IDA--particularly the TSE has been a very well run organization. We have a lot of confidence in the job that they do--we have very close contacts with them--and the quality of their oversight and regulation of the market.

Just one anecdote, but I think it is important. There is what is called a trading link between the Toronto Stock Exchange and the American Stock Exchange whereby for interlisted securities--that is, if Imperial Oil is listed both here and on the American exchange--you can trade as if it is one market and find the best price. There is even a currency conversion that is done automatically on the computer and flashes right up on the screen.

Before the Securities and Exchange Commission would agree, and before we would agree with the SEC to have one market--that is, Americans could, in effect, buy on the TSE if the market were better for Imperial Oil here than it was in New York--it had to be satisfied as to what it calls the surveillance and the audit trail that the TSE had; that is, the ability to track every single trade, to know who was trading, in what size and who are the brokers on each side in that. After their investigation, they told us that the TSE was as good or better than anything they had seen in the United States, in terms of audit trail, and they did not have any problem at all approving that link.

I think the TSE does do a good job. Just to come back to the American market, there are areas where we are significantly ahead of them in regulation. Their whole takeover bid thing, the whole thing of greenmail, of two-tier bids as it is called, and bust-up bids where there is a buyout and you bust up, and all that. Most of those things are simply not possible in this market because of our regulation. We think they are inequitable and unfair and lead to unfair results and we have been away ahead of them in takeover bid regulation.

The Americans, in effect, believe in a much less regulated market. It is laissez-faire and let everybody look after himself sort of thing. We do not



believe in a totally regulated market, but there is a happy medium.

Mr. Black: You mentioned front-running in your opening remarks. Do you have any other approaches you can use, other than appealing to integrity and ethics, in terms of dealing with such a problem?

Mr. Beck: Sure. If that does not work, one adopts rules. You set down standards; rules for behaviour; a reporting, as we do, let us say, in insider trading. If you are a director or a senior officer of a company, you have to report every single trade you make within 10 days of the end of the month in which you make it, and now we are going to speed that up and make you do it within 10 days from the date of the trade as opposed to the end of the month. We publish that.

With respect to traders--I am just thinking off the top of my head--now--if at the end of our investigation we see something that really needs regulation, we may say institutional traders have to disclose all their trades, have to disclose both to us and to their employer, the securities dealer with whom they have an account, and have to disclose every trade when it is made.

There are ways. A great jurist once said that sunlight is the best disinfectant. If you have those kinds of disclosure policies in place, very often they will deal with that kind of problem, but we are not there yet in terms of making up our minds about that.

Mr. Chairman: Mr. Beck, over the past few years there have been a lot of lawyers and accountants who have left the commission for other private enterprise.

Mr. Beck: Right; greener pastures.

Mr. Chairman: Perhaps it is more lucrative but the grass is probably still the same length on the other side of the fence. Why is that? Once they have been with the commission for some time they have insider knowledge. Is that a benefit to them to go into the private sector or to sell themselves as good people to be dealing with?

Mr. Beck: I think there are two things. One, we are happy about that in the sense of the quality of the young men and women who are working for the commission and the training we are giving them. That quality is recognized by the top law firms, the top accounting firms and the financial institutions, so we are a super training ground, if you like.

On the other hand, they are young men and women who are looking at their careers. Toronto is and has been for a long time now a booming financial centre. As I say, it is the centre of finance in Canada and the top law firms and top accounting firms in the institutions simply offer very lucrative rewards to young people living in a very expensive city. It is not too much to say that they can double what they get at the commission quite quickly, with the possibility of tripling or quadrupling over a five- to 10-year period. That is extraordinarily attractive and we understand that. It is the same with every agency. It is the same in Washington as it is in Toronto. We just live with it, although we constantly make the case to--

Interjection.

Mr. Beck: We did make a submission to Management Board about

upgrading our lawyers and accountants and moving our lawyers to what the Attorney General has, what they call a man-rank system where you can move your people up more quickly without having to go back to personnel to reclassify and get approval. That has been approved by Management Board and we have got executive category classification for our deputy director.

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I made a proposal to the ministry early this year and we talked about sort of unhooking the Ontario Securities Commission from the civil service standards, if you like, giving it a greater degree of independence in terms of personnel policies, classification of salary and budget.

Indeed, that is what is being done in England where they are just creating something like the OSC or the Securities Exchange Commission, the Securities Investment Board. They unhooked it from the civil service and, oddly enough, created a private corporation that has a relationship with the government but is independent of civil service standards for just that very reason, so that it can compete with private industry. Government did not want to do that, and I can understand reasons it might not, but on the other hand, it has been forthcoming in giving us a greater degree of flexibility. That is always going to be a problem.

Mr. Chairman: The commission has expanded its definition of "insider trading" to include tippers among others with a special relationship.

Mr. Beck: Tippers and tippees.

Mr. Chairman: Can you give me some more information on disclosures? Do you have staff people at the stock exchange daily?

Mr. Beck: No. We have the screens and we monitor trading. We notice something unusual. We are in touch with Toronto Stock Exchange staff who are also monitoring and notice anything that is unusual. Trading is very visible these days. With respect to the tipper-tippee and the greater penalties, maybe I will ask Mr. Pascutto to say a word about that because it is an important step for us.

Mr. Pascutto: First, I might comment on the relationship between the Toronto Stock Exchange and the Ontario Securities Commission in terms of following up on unusual market activity. If there is unusual market activity in terms of volume or price movement on the Toronto Stock Exchange, the market surveillance department of the Toronto Stock Exchange would normally do an initial review of the trading. It would canvass its member firms to determine who had done the trading, and if it appeared there was any suspicious trading that had taken place, it would forward a report to the commission. The commission would then follow up and in appropriate cases commence an investigation to see if there had been any insider trading involved.

In terms of the new legislation, one of the steps the commission took, I guess about a year and a half ago with the revelations in the United States of insider trading, was to propose to the government an expansion of the scope of the insider trading legislation and the penalties. The expansion of the scope would include, in addition to insiders who would be officers and directors and 10 per cent shareholders of companies, people who had been tipped by those specifically named insiders. As well, the penalties for improper insider trading up until recently were a maximum fine for an individual of \$2,000 or one year in prison. That has been expanded so that it is now the greater of



three times the profit that has been made from the insider trading or \$1 million, and a maximum jail term of two years. That legislation came into force just last month.

Mr. Furlong: I would like to follow up on that particular question. How far can you go in terms of down the road? I recognize that once information gets out, the word spreads. Where do you draw the line? For example, I might get the information because I happen to hear it in a room or sitting in a bar. Where do you draw the line, or can you?

Mr. Pascutto: The legislation draws the line where the individual who receives the information receives it from someone he or she knows is in a confidential or special relationship with the company. If you were sitting in a bar and you were passed on that information by a director of the company, you would be aware that he was a director of the company and that it was improper for him to pass on the information, so liability would attach to you. On the other hand, if you were passed on a rumour and you were unaware of the source of the rumour, if you were unaware whether it was accurate in that you did not know whether it was from a person who would be in a position to know and would be in breach of his obligations, the liability would not attach to you in that situation.

Mr. Furlong: I would like to turn to another area, the federal decision to deregulate the financial institutions and to allow banks to participate in the securities market. Are you, as a commission, concerned about a potential conflict of interest in that sense, where banks not only become investors in the market but also then turn around and sell securities?

Mr. Beck: Yes.

Mr. Furlong: Are you considering special rules or regulations dealing with that?

Mr. Beck: We do. In the regulations that were passed prior to June 30, there is a very extensive code with respect to conflict of interest, with respect to underwriting securities of what we call connected issuers, with respect to recommending the purchase or sale of any such securities and with respect to advising as to securities.

There has to be full disclosure of the relationship in all those cases. That disclosure has to be included in the monthly statement that is sent to every client of that institution. For instance, take two firms that are not connected, Royal Bank and Dominion Securities. If Dominion Securities were underwriting an issue of Royal Bank or of a major creditor of the Royal Bank, our rules say Wood Gundy has to have a co-underwriter, an independent underwriter, who is going to underwrite at least as great a proportion as Dominion Securities does, so you have an independent underwriter there.

If you are going to recommend any of those securities in an advisory letter you put out, you must indicate your relationship. If you are telling a client on the phone to buy or sell those securities, you have to tell him about that over the phone, and then in a monthly statement there has to be a disclosure of the relationship. Yes, we are aware of those potentials for conflict and we try to deal with them with a very tight disclosure and underwriting regime.

Mr. Chairman: Supplementary to that, is there a need for a national securities commission?

Mr. Beck: You usually do not get a provincial securities chairman saying yes to that. I think that with the banks, the trust companies and the insurance companies coming into the business, with greater internationalization of securities markets and the need for international co-operation, there is clearly a place for a federal role. The new OSFI, the office of the superintendent of financial institutions, which is to regulate the banks, the trust companies and the insurance companies, will clearly have some securities regulatory capacity, and we are co-operating with it already. My guess would be that the securities capacity of OSFI will continue to grow in terms of a federal presence, so you may see a federal securities commission evolve naturally out of the work OSFI does.

Clearly, the other way to go is for the federal government, at some time in the next two or three years or whatever, to take the bull by the horns and say it is time for a national securities commission. They may well do that, but it will not be the Securities and Exchange Commission model. It will be a model that will take account of the federal-provincial reality in this country and of the fact that the Quebec commission and the Ontario Securities Commission are up and running. There will be a lot of delegation and there will be a place for major provincial commissions even if it does happen. Frankly, I think some form of it will happen.

Mr. Runciman: I guess this could be related to tipping, being a tipper or tippee. You mentioned gossips earlier on. I am relating that to a situation in New York where a financial columnist for the New York Times was involved in a situation where he was revealing the names of the firms he was going to mention in his column. Is there something comparable to deal with that sort of situation in Ontario?

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Mr. Beck: No, and neither, really, was there a specific law in the United States. What they did in the United States was get Mr. Winans from the Wall Street Journal under what they called their general antifraud. Subject to my being corrected by the director, I do not believe Winans would come under our current insider trading legislation. What we probably would do if we discovered that kind of case, would be to bring a hearing. The staff would probably make a recommendation to the commission and there would be a hearing to take away Mr. Winans's right to trade in Ontario. As we say, if you take away his exemption, therefore he is barred from trading in the markets in Ontario.

Mr. Runciman: But there is no penalty for the--

Mr. Beck: No criminal penalty as such. We would just bar him from the market in Ontario.

Mr. Runciman: With the changes in respect to insider trading, the maximum penalty is two years and a \$1 million fine. Is that right?

Mr. Pascutto: It is the greater of three times the profit that was made or \$1 million. If you had an Ivan Bosky type of situation where the profit was \$100 million, the maximum fine would be \$300 million in that case. If I might expand on the chairman's--

Mr. Runciman: In reality, though, is that sort of fine realistic?

Mr. Beck: No, it is not realistic.



Mr. Runciman: It is not recoverable.

Mr. Beck: You certainly may get a \$50,000 or \$70,000 profit, and that gives the judge at least the ability to take a look and impose a very stiff penalty.

Mr. Runciman: Is a two-year sentence an adequate sentence? I am looking at some of the sentences that are being meted out in the United States, significantly higher than two years. Given our court system, they are probably out in nine months with a two-year sentence. I am wondering how severe they really are.

Mr. Beck: I guess two years would be the maximum under a provincial statute, would it not?

Mr. Pascutto: I think the problem we had is that we were dealing with the problem of a provincial statute, although I think British Columbia may have gone somewhat beyond that. We are aware that the Ontario Law Reform Commission, which is looking at the Criminal Code, is looking at the question of insider trading as well. We have made some submissions to them and they may think it appropriate to include certain aspects of insider trading in the Criminal Code itself. If they were to do that, obviously it would open up the scope of the sanctions that were available to them.

Mr. Runciman: I would like to talk a bit more about your complaint backlog. You indicated that you prioritize complaints. I would like to know how you go about doing that. How you rank the importance of complaints that come to your attention?

Mr. Pascutto: I think that was one of the problems we had that prompted us to undertake a review of the structure and the efficiency of the branch. It was very much, and still is I must say, an ad hoc type of approach. You would look at all the aspects of a case. You would determine whether it was an ongoing fraud. You would look at--

Mr. Runciman: Maybe I can simplify this. Could you take us through a situation? Tomorrow morning you receive a complaint in the office. Can you take us through the process just so we have an understanding of how it is dealt with, how you assess it and what kind of level of importance you give it.

Mr. Pascutto: An example might be the Osler matter. That came in to us. We saw that it was a multimillion dollar case. It involved, in the case of Osler's clients, some 17,000 clients. It would have had an impact on the integrity of the system. It was important that it be handled appropriately. We basically took off whatever resources we could find. We advised the government that we would need some additional resources and we contracted for an outside law firm.

Mr. Runciman: That is a rather obvious one. I would rather you deal with an average kind of complaint, if you will, if there is such a thing. We expect you to react the way you did with Osler.

Mr. Pascutto: An average insider trading case, to take an example, would probably start off with an attempt to gather in information. I expect that if there is a takeover bid involved and it is attracting a lot of publicity--

Mr. Runciman: I think you are misunderstanding me.

Mr. Beck: I think what you want to know is, if somebody calls us on the phone and says, "Look, I've got a complaint about XYZ, I've got a problem here."

Mr. Runciman: You do not immediately put a team of investigators on that?

Mr. Beck: No, absolutely not. One person probably would initially follow up and gather some information. The lawyer or accountant who is assigned to it, depending on the nature of the complaint, might make a very quick decision that there is nothing there, no follow-up.

Mr. Runciman: You are suggesting that when you receive a complaint you make an initial assessment, or an individual does, in immediate response to that, the same day it is received?

Mr. Beck: Oh, that would be unusual, I think. You do get some that are clearly off the wall, if I can put it that way. There is a flood of those all the time and you do have to make some assessment. If it looks like it is something more major, then an investigator may be assigned to it to gather initial facts and make a report. It then may involve one of the senior lawyers or senior accountants to take a look and see if we involve what we call our team approach. We put together an ad hoc team of a lawyer, an investigator and an accountant--there may be more, depending on the size--to do an investigation.

By this time the associate deputy director or the deputy director may have taken a look at the file and agreed, "Yes, it's a go," or "No, it's not. There is not enough there and we have too much on our plate." If it is a go, then you put a team together. You go out and interview people and get records. They may come to the commission for what we call a section 11 order, which gives us the right to compel testimony from people and gives us a right to seize documents and examine them.

Mr. Runciman: What I am getting at, though, is that I am trying to tie this into what we talked about, the backlog.

Mr. Beck: Right.

Mr. Runciman: Your director indicated he had some cases that are two and a half or three years old, complex, etc.

Mr. Beck: Sure.

Mr. Runciman: Are there some cases sitting there, in terms of backlog, that have not gone beyond that initial stage of investigation? You have taken your cursory look at it and have said: "There is some merit to this. We've got to take a look at this." Then it is sitting on the back burner for X years. Do you have a number of those out there? Why do you have that backlog? Obviously, you are not able to deal with it in some instances.

Mr. Beck: I do not think we would have any--I should not say "any"; "any" is a dangerous word. I would be very surprised if we had any that were right at that initial stage. The backlog would probably be ones where an investigation was opened, you decided you were going to take a look at it and it is chugging along, as it were. Would that not be more the truth of it?

Mr. Pascutto: It is chugging along, and perhaps as time goes on, you



develop different priorities and it sits there for a while. There may be cases that have sat there for some time, where it does not appear that investors have lost money or there are other aspects of it that make you decide that really it is no longer worth pursuing. You might have a case that stays on the shelf some time and you might eventually decide that administratively it no longer makes sense to pursue this case.

Mr. Runciman: I do not want to be unfair to you, but you said it is ad hoc. You are sort of flying by the seat of your pants, in terms of you do not have any laid-down criteria. You get a complaint and you try to assess it in respect to the criteria that you have in terms of prioritization.

Mr. Beck: I think that is fair. I do not think we have hard-and-fast criteria. It is a matter of judgement. In Canada, one of the things the Lindquist-Holmes report told us is that we were probably pretty inefficient in closing files, that we left too many open too long, as I say, that we ought to have been quicker not to go down certain paths initially and that we ought to be a little firmer about deciding to close investigations, rather than leaving them open and gathering more bits.

Lindquist-Holmes pointed out both of those things: first, that we had too many open initially and that we should have closed more more quickly right to begin with, and that we should not have spent resources on them; second, once we did open files, they were probably open too long and decisions should have been made at an earlier date to close them.

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Mr. Runciman: Lindquist-Holmes versus Peat Marwick, what is the difference?

Mr. Beck: It is the same.

Mr. Runciman: The same thing?

Mr. Beck: That is the forensic side of Peat Marwick.

Mr. M. C. Ray: To what extent are you awaiting the result of civil liability cases and sitting on files and complaints?

Mr. Beck: I do not think we await the results of a civil liability file. Something may come out of a criminal case that may come to our attention. Sometimes we know that we have a case against a registrant, but we stay our hand until such time as a criminal case is brought, because we know there is going to be a criminal case, and then we will deal with the registrant to protect rights and that sort of thing. But it is not usual to stay our hand out of a civil case.

Mr. M. C. Ray: Has there been an increase in the amount of civil litigation arising out of transactions now or not?

Mr. Beck: Yes, I think so; not huge. I was going to say that there has been what I call a very significant change in the market in terms of enforcement. That is that institutional shareholders are now complaining. It used to be the rule, what was called the Wall Street rule, for institutional shareholders: if you did not like the stock or you did not like the way management was behaving, you sold. Nobody has the time and the money to fight and there are too many other good securities out there to buy when you are

managing a \$2-billion or \$3-billion portfolio.

Now institutional shareholders are banding together and fighting. They are coming to the commission to complain; they are going to the court. That is a very healthy development, because they have the wherewithal. They have the dollars and the time to bring those cases. So that has been one of the healthiest developments in the market that we have seen.

The costs of civil litigation in our jurisdiction, given the cost structure and the fact that there is no contingent fee, are prohibitive for small shareholders.

Mr. Chairman: But you do not sit on the files while that is going on and rely on that as form of--

Mr. Beck: No. Very often an institutional shareholder will come to the staff and complain. The staff will take a look at it and a hearing may be initiated, with respect to a particular matter before the commission. That has happened a number of times recently in big cases: Southam-Torstar, where the institutional shareholders were involved, Southam-Selkirk, Canadian Tire, and Canada Malting were four major cases which I do not think you would have had brought in the way they were without institutional shareholders.

Mr. Black: Going back to one of Mr. Runciman's initial questions concerning the handling of complaints, how many of the complaints you receive would be--I was going to use the word "frivolous" and that perhaps is not the correct word--would lack substance upon a preliminary investigation?

Mr. Pascutto: It is difficult really to say that we have a lot of complaints that are frivolous. Our approach has been that, whenever we get a complaint from a member of the public, we treat it seriously and we give it the best response possible. We may write back to the complainant and say that we do not think there is anything disclosed in the letter that he sent us which indicates that there has been a breach of the act that requires investigation, but we would try to respond to any complaint that is made to us by a member of the public. I do not know if that responds to your question.

Mr. Beck: But having said that, though, even though we do that--

Mr. Pascutto: We may then close.

Mr. Beck: There is a significant number that you close quite quickly if there is no substance.

Mr. Pascutto: We can, if it is helpful to the committee, try to obtain for tomorrow an indication of the number of complaints and inquiries that we have had over the last year, if that would be helpful.

Mr. Chairman: That would be appreciated.

Mr. Black: I have another supplementary, if I may, Mr. Chairman. I am interested in the point that Mr. Runciman is raising. Does the question of resources come into the question of how quickly you process complaints? Are you understaffed? Are enough of your resources directed to this particular aspect of your work?

Mr. Beck: We felt we were understaffed at the time we made a submission to Management Board last year and got 23 new positions. Not all of



them are, unfortunately--we have opened up a new branch called capital markets, which will deal more with trading and mutual fund activity, but we have beefed up our capital markets. We are implementing the report.

I think we probably have adequate resources at the moment, but that is a leading question. Every agency wants more resources and we could probably use more people and throw them at the investigations. I think we are probably in pretty good shape at the moment, although we monitor it.

Mr. Pascutto: I do not know if I should, if it is unseemly for me to disagree with the chairman.

Mr. Beck: He always disagrees with me.

Mr. Pascutto: When we made our submission to Management Board in excess of a year ago for the additional resources, it was to deal with the increased workload throughout the commission. With the exception of a new compliance section that we wanted to start up in our enforcement branch, we specifically decided not to make a request for the enforcement branch for additional resources because we wanted to see what the result of the review of that branch was going to bring about.

Now, as I have said, we have completed that review and we are about to implement it in the next few weeks. We are restructuring that group so that there is a separate complaint and inquiry section which would try to deal on an expeditious basis with the complaints that do come in.

When we made the submission for greater resources a year ago, our thought was that after we had restructured the branch and had an opportunity to see how it operated, we would then make a decision as to whether there was a need for additional human resources in the branch. We have not had an opportunity yet to see that in the restructured environment.

Mr. Black: I guess I was concerned that Mr. Runciman was going to recommend that we add more staff. It is one of his favourite topics that we should add more and more civil servants. I thought I would pre-empt him before he got to that recommendation. I knew that was where he was heading.

Mr. Chairman: Mr. Runciman, you can carry on now.

Mr. Runciman: I know Mr. Beck will not buy that.

How much does the Peat Marwick study cost the taxpayers?

Mr. Beck: I believe \$38,000 was the figure.

Mr. Runciman: The reorganization of the commission that you mentioned in the capital markets division, the general counsel's office and the general accountant's office took place prior to Peat Marwick being undertaken.

Mr. Beck: Yes.

Mr. Runciman: What were those changes based upon?

Mr. Pascutto: The other changes that you are speaking about in terms of the general counsel and the chief accountant date back to a request for resources and a study that was made going back to 1983. In 1983, the ministry

did an assessment of the commission and concluded that additional resources were required at that time. The process of conducting that review, obtaining approval for the new resources, classifying the positions and having the competition to fill the positions meant that a lot of the positions were not filled until 1985. They did not show up in our organization until 1985, but it was in 1985 that the general counsel and the chief accountant were created.

Mr. Runciman: I also think it would be helpful, in terms of having a better appreciation in committee of how decisions are taken within the commission, if we had an organization chart as well--perhaps we have one and I have not noted it--so that we know just how the decisions flow within the commission.

Mr. Beck: We would be pleased to.

Mr. Pascutto: There is an organizational chart in our annual report. I do not know if you are looking for something beyond that.

Mr. Runciman: Actually, I have not seen it. If it is there, that is fine.

Mr. Pascutto: There is a chart in there.

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Mr. Chairman: Any further questions, Mr. Runciman?

Mr. Runciman: Yes, I do. I have a number, Mr. Chairman. You talked about increasing your staff complement by 23 last year and whether you require more bodies. It is something we will think about as well. We briefly touched on the turnover rates and I would like you to give us a few more details on just how significant has the turnover been in the past two or three years. We have heard that it is abnormally high. I would like to hear some details.

Mr. Beck: I think last year it was abnormally high. We lost four out of five. There were four lawyers or more in corporate finance, almost all at once, and the same in enforcement. We lost a significant number of our lawyers and a couple of accountants. It was abnormal, but I think you have to appreciate that it took place in 1987, which was the fifth year of the boom in the markets. The firms were just reaching out for as many trained bodies as they could get and offering very high figures. That has damped down after October 19. That has changed. We are not being raided now and my guess is we might be in a buyer's market. There is no question that it was abnormally high in 1987.

Mr. Runciman: You are saying 1987 was an aberration.

Mr. Beck: I think so. In fairness, we will always lose some people to the private sector, but we will not lose them in the numbers and the clumps in which we lost them in 1987.

Mr. Runciman: Which I assume would be at a much higher rate than across the civil service.

Mr. Beck: Yes, I would think so.

Mr. Runciman: You talk about these people who develop some expertise in regard to the securities business. How long has the director been with the



securities commission?

Mr. Pascutto: Four and a half years.

Mr. Runciman: What is the average tenure of these people who were leaving last year. Are we looking at relatively new people?

Mr. Pascutto: It would probably range from about two to five years.

Mr. Runciman: I guess you are saying that you are unique in a sense. I was trying to relate that we have got all kinds of talented people working within government and subject to the same kinds of financial pressures. For a variety of reasons many of them do stay with the civil service. Mr. Beck, you are in your current position for a variety of reasons. I am just wondering if you would like to comment on the whole. I am just wondering if we are really getting at all of the reasons behind the turnover. There are some other areas that I want to talk about later. You are someone who is obviously making a sacrifice, if you will. Would you like to comment on that?

Mr. Black: On a point of order, Mr. Chairman: I just want to point out that 1987 was a year of turnover in many fields.

Mr. Chairman: Not all for the better.

Mr. Runciman: Not in my riding, thank goodness.

Mr. Beck: I think the staff of the securities commission, unlike government staff, is peculiarly centred on lawyers and accountants, on professionals. It is also peculiarly centred on an area within those professions--and they are very broad--that are very high-earning areas. They are big profit centres in the law firms and in the accounting firms. So that people who have the expertise in the finance business in capital markets are very attractive at boom times. I think we will always be more susceptible than other areas of government.

The other thing was, as we discovered when we looked at it and reviewed the system, we were behind in our legal staff, even the staff of the Attorney General (Mr. Scott), so that we needed upgrading within the government context. We have done that and have given ourselves more flexibility, which I think will be a help.

As much as I regret to say it, I think we are always going to be vulnerable to a certain extent, more vulnerable than other agencies or other parts of government, although not, I certainly hope, as in 1987. I do think that was a very unusual situation. As for myself, I came from academe, so I am used to genteel poverty.

Mr. Black: We are familiar with it as well, don't worry.

Mr. Runciman: At least you had tenure.

Mr. Beck: That is true. I did and still do.

Mr. Runciman: Perhaps this is out in left field, but you talk about Toronto being a very expensive city, which we will all agree with, but is it an absolute necessity for the Ontario Securities Commission to be centred in Toronto? We see government moving a number of ministries and agencies outside the confines of Metropolitan Toronto. Is it out of the question for the OSC to

look at a different locale?

Mr. Beck: Yes, it would be. No small part of our effectiveness is that the individuals whom we regulate are within a stone's throw, literally, of where we are. Our ability to communicate with them, to talk with them, to lunch with them, if you like, to have that easy interaction, to be right there in the centre, is absolutely essential.

Mr. Runciman: How many lawyers do you have working in the commission?

Mr. Beck: About 24 or 25 lawyers work with us.

Mr. Runciman: I was advised that in 1986, not 1987, you lost 19 to 20 lawyers. Is that inaccurate information?

Mr. Beck: I think that is high. I think it was about 10 to 12 that we lost. Again, we will get you that figure, but I think it would be in the 10 to 12 area.

Mr. Runciman: Also, I would like to make a few comments and have you respond to them. Even to me, the attitude of the commission in terms of dealing with people seems to be lackadaisical. It does not make any effort to develop people or to use those it develops. Can you respond to that? I guess this is really dealing with the lack of someone responsible for human resources development.

Mr. Beck: Right. I would be surprised at that. It is a high-pressure agency. There is a lot of pressure on all of us to respond and to respond quickly. Not everybody works well in that. You do not always have, frankly, the time to train and develop in the way you would like. Both the general counsel's office and the chief accountant's office have that mandate. That is one of the reasons for bringing them in, to give greater focus.

Mr. Runciman: Pardon me. Who has that mandate?

Mr. Beck: The general counsel's office and the chief accountant's office, for the lawyers on the one side and the accountants on the other. One of their mandates is professional development, personal review of professional development to make sure that we are having in-house development, to send people on courses. We are doing much more of that than we ever used to do. We probably did not do enough in terms of human resources.

Mr. Runciman: You mentioned lawyers and accountants. What about the other people? Are all of your investigators lawyers?

Mr. Beck: No, some of the investigators would be police officers, and they go off on their training courses also. Those would be the three professional or quasi-professional categories.

Mr. Runciman: So you do have ongoing staff development programs for employees.

Mr. Beck: Yes, very much. Although I frankly say that we have not done as much as we should have until recently.

Mr. Pascutto: One of the problems that we do have as an agency is that we are independent, separate and apart ministry-wise. The human resources effort is centred in the ministry, and it is somewhere else.



As part of the discussions with the government about classification and compensation of our staff, we did discuss the possibility of adding a personnel officer to the commission. The government has authorized the strengthening of our administration side, so we are going to be targeting that area to beef up.

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As well, we have been doing a fair bit on an ad hoc basis. We have, on a regular basis, professional development seminars that we hold in the mornings. This week, we have a seminar for our professional staff that we are holding off our premises where all accountants, lawyers and investigators are going to be attending. The chairman, myself, the chief accountant, the general counsel and other senior managers are going to be reviewing key cases with them. We have internal secondments within the commission.

Because of the shift in our workload from public financings to the investigation side since the October crash, we have seconded people from corporate finance to our enforcement area.

In terms of general government standards, I think, for the rest of our staff, for our nonprofessional staff, we meet and probably exceed the level of secondments and acting positions that you would find in the rest of government. I know, in the area of affirmative action, that we have had a very positive report from the people responsible for affirmative action in our ministry.

So we are working to some extent on an ad hoc basis with our professional staff. We are doing a fair bit. We would like to do it on a more regularized basis. With the rest of our staff we are meeting at least the ministry standard for acting positions, development positions, secondment positions and the like.

Mr. Runciman: Did Peat Marwick touch on this at all?

Mr. Pascutto: Yes, that was one of the aspects that they did touch on in their report, the training of enforcement branch staff. As I said, we have a session this week. On Thursday we are spending from 8:30 in the morning until two in the afternoon with the largest group, the enforcement branch staff. There was another full-day training session on a Saturday in November for enforcement staff.

In addition, we encourage staff to take securities courses and we subsidize them for that. A number of our staff took the securities law course at the University of Toronto. As well, they take the Canadian securities course. For some of the positions, it is a required course. For others it is strongly recommended and, again, we subsidize that.

Mr. Runciman: How many people do you have in the investigative branch?

Mr. Pascutto: Enforcement branch has 46 staff.

Mr. Runciman: So that is the same. In effect, they are the people who carry out the investigation.

Mr. Pascutto: Yes.

Mr. Chairman: How many others do you have? What is your total staff?

Mr. Pascutto: Our total classified staff is 153.

Mr. Chairman: You have 153 staff and you have about a \$3.5-million budget?

Mr. Pascutto: In this fiscal year, which is not over, we will be looking at \$8 million.

Mr. Vaccari: Our request for funding for 1988-89 is just under \$8.2 million.

Mr. Chairman: I was talking about wages and salaries.

Mr. Vaccari: That would total about \$5.5 million.

Mr. Pascutto: We do have an annual report that we circulated to the committee. I think there are figures breaking it down. That would be, of course, for the 1986-87 fiscal year.

Mr. Runciman: You probably saw the column last week--they try to be gossip columns--with some reference to having OSC policemen, or former policemen, versus lawyers in the enforcement branch. Out of that 46 or 47 in the enforcement branch, how many are lawyers? Do you have too many lawyers?

Mr. Pascutto: No. I think about six would be lawyers, six would be accountants, approximately eight would be investigators--they would be ex-police officers, principally--and then we would have a number of support staff and management positions and our market surveillance unit. That is the approximate makeup of the branch.

Going back to when I joined the commission, we had a situation where we had two lawyers, I think over a dozen investigators and about five accountants. What we have been trying to do is change the balance so that we would have probably an equal mix of the three professions.

With the evolving nature of the markets in terms of the complexity of the markets and the increasing emphasis on financial matters, we see an increasing need for the legal and accounting professions, but we also see a continuing need for the skills that are brought by the investigative people in our organization.

If you look at an agency such as the Securities and Exchange Commission, its enforcement branch is almost entirely composed of lawyers. Of their professional staff of about 150 in Washington, I think about 120 would be lawyers.

Mr. Runciman: Are they having turnover problems too?

Mr. Pascutto: They are experiencing turnover problems. If you would give me a few days, I could probably bring you some press clippings from the New York Times and the Wall Street Journal talking about the fact that they have problems. There was one story commenting that the daughter of the chairman of the SEC in her first year of law practice was making more than the chairman of the SEC. There are the same kinds of problems there as we have in Ontario.



Mr. Runciman: We are hoping to visit them in a week or so.

Mr. Chairman: On that point, Mr. Runciman, you can carry on tomorrow. However, Mr. Furlong has a question. He will not be here tomorrow, so perhaps he could ask his question. I would like to adjourn by four.

Mr. Runciman: Before Mr. Furlong begins, I suggest that perhaps tomorrow, if you and the other members of the committee agree, it may be advantageous for us to meet for an hour in camera before the witnesses appear again just to have an opportunity overnight to digest what we have heard today and perhaps review it with our researcher. We still have a full day to put in tomorrow. I throw that out as a suggestion. It could be helpful to the committee.

Mr. Chairman: He has about two minutes he wants to spend with us after we have finished here today.

Mr. Runciman: That is fine. Maybe that will do the job.

Mr. Chairman: That is not really on the same line as this, if he wants to discuss it. However, Mr. Furlong, ask your question, please.

Mr. Furlong: I am curious; you talk about your investigative branch. Going through the process, as I read the act, I assume you can compel witnesses, documents, etc. Do your investigators then make a recommendation to the commission? Is there a formal charge laid or is there a hearing structure? How does that work?

Mr. Pascutto: First of all, before the powers of the commission can be exercised, there is a report by the staff of the commission to the commissioners themselves. We must convince them that the sections of the act are satisfied, that they would grant the people who would be charged with the investigation the specific powers that are set out in the Securities Act. The staff cannot go off on a frolic of its own, using those powers.

Once the commission has authorized the use of our investigative powers, we conduct an investigation and report back to the commission either that the file is being closed because there is no indication of improper activity or that we are recommending administrative proceedings in front of the commission or that we are recommending charges under the Securities Act.

If charges were proposed under the Securities Act, they would have to be approved by a quorum of the commission on the recommendation of staff, and then they would be forwarded to the minister for his signature. The other alternative would be criminal charges. In the case of criminal charges, they would generally be turned over to the Attorney General.

Mr. Furlong: If it is forwarded to the minister, does the commission hold a formal hearing of some kind? If individuals or companies are charged, for example, on insider trading, do they ever get a hearing? When do they get that? Is it during the investigative process or after you have made the recommendation to proceed?

Mr. Pascutto: There are two levels. People would be entitled to a hearing if they are charged with some kind of wrongdoing. They would have an administrative hearing before the commission, which would not have the power to levy fines or imprisonment; that is a matter strictly for the courts. They have a hearing at that level.

At the staff level, in the last couple of years we have been developing a practice where, if we are going to be recommending some kind of administrative or criminal proceeding, unless it is a relatively straightforward case, we would give the person who is under investigation an opportunity to be heard, to make arguments as to why it is inappropriate in the circumstances of that case, in terms of we do not have all the facts and he would like to present us with additional facts which might persuade us there was no misconduct; or, in terms of the law, he might say that we have neglected to review these authorities, which establish that in fact there was no breach.

Whenever we are moving to a recommendation for either a prosecution or administrative proceeding, where we are dealing with other than a very straightforward case we would give people an opportunity to present the staff with their side of the case and we would make the commission aware of the kinds of arguments that people have made to us when we are making our recommendations to the commission.

Mr. Furlong: Does the power that you seek from the commission authorize you to subpoena documents, to call witnesses, to do all of those things prior to your final determination that there is in fact a matter that should be pursued further? You have that authority?

Mr. Pascutto: Yes it does, but before we are given that authority by the commission, it is required to make an assessment of the case and determine whether it is suitable for the use of those powers. So they would make an assessment that there are reasonable and probable grounds to believe there has been a breach of the act, and they would make that assessment prior to granting the powers to subpoena documents and ask witnesses to attend.

Mr. Beck: I appreciate that the whole of tomorrow is booked up. I sense we have had a good canvass, and if it would be possible at all to finish in the morning tomorrow, that would be greatly appreciated, but I am in your hands.

Mr. Chairman: What we would like you to do is to send over the material that we have requested today. We want to meet in camera for approximately one hour, at 10 o'clock until 11. At that time, we will resume with you. If possible, we could try to be done by noon, but there is no guarantee of it.

Mr. Beck: I understand.

Mr. Chairman: When will you be able to have the material to us? Will you be able to do that this afternoon or first thing tomorrow morning?

Mr. Pascutto: The first thing tomorrow morning would probably be the safest bet. It will probably take us a few hours to get that assembled.

Mr. Beck: Do you have notes of what was wanted?

Mr. Pascutto: Yes.

Mr. Chairman: Would you bring it to room 472 tomorrow? Thank you.

Mr. Eichmanis: I forgot to mention this morning--or I just vaguely referred to it--that we will be making a trip to Boston and Washington in the United States where we will be looking at the way the American legislatures



review agencies. I want to point out that the way we have structured those few days in each place is that we will be concentrating on how the legislature, either the House or the Senate in either case, deals with oversight of various agencies and then interviewing the various chairmen and people involved in the oversight on the legislative side.

Then will be looking at what is in effect the equivalent to our Office of the Provincial Auditor, which is involved in the oversight of agencies on the staff side. Finally, we will be looking at comparable agencies to the agencies we are looking at now. For exmaple, in Washington, hopefully, we will be able to look at the Securities and Exchange Commission and the Pension Benefit Guaranty Corp., which is something equivalent to what we are looking at in this round.

I would like to invite you to remember and keep in mind some of these same issues and questions when we go and look at these organizations in the United States so that we will have a better means of comparison, if you like, using the two organizations as yardsticks against each other. Then when we come back and make recommendations, we will have that comparison before us. I just want to encourage you to remember that part of the exercise is also to create the questions, if you like, for the visits to the organizations in the United States.

Mr. Chairman: That is for your information. The committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 4:05 p.m.





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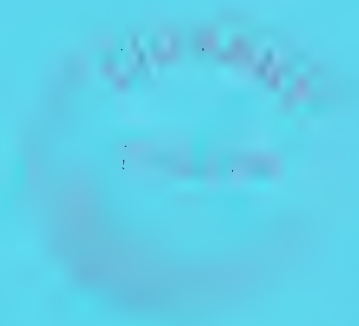
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO SECURITIES COMMISSION

WEDNESDAY, MARCH 9, 1988



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Furlong, Allan W. (Durham Centre L)  
Lipsett, Ron (Grey L)  
Martel, Shelley (Sudbury East NDP)  
Runciman, Robert W. (Leeds-Grenville PC)  
South, Larry (Frontenac-Addington L)  
Velshi, Murad (Don Mills L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh  
Nicholas, Cindy (Scarborough Centre L) for Mr. Furlong  
Ray, Michael C. (Windsor-Walkerville L) for Mr. Dietsch

Clerk: Arnott, Douglas

Clerk pro tem: Manikel, Tannis

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Securities Commission:

Beck, Stanley M., Chairman  
Salter, Charles, Vice-Chairman  
Pascutto, Ermanno, Director



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, March 9, 1988

The committee met at 11 a.m. in room 228.

AGENCY REVIEW  
ONTARIO SECURITIES COMMISSION  
(continued)

Mr. Chairman: I call the meeting to order. We have been waiting for Mr. Runciman, but I feel there are others who have questions they want to ask. We can proceed, if that is agreeable to the committee.

Mr. Ray, I think you have some questions that you probably can lead off with.

Mr. M. C. Ray: Mr. Beck, yesterday you indicated that the US Securities and Exchange Commission had filing requirements that you thought were unnecessary. I wonder if you could generate within the Ontario Securities Commission report the differences between the filing requirements of the US Securities and Exchange Commission and our own, and some analysis of that to help us arrive at the same conclusion that you arrived at, that they are unnecessary.

Mr. Beck: I think we can do that, sir. It is not something that can be done quickly, but we will try to put it together. The particular document I had in mind was the annual filing, which is known in the SEC as a form 10-K, which is their main filing. We will supply a 10-K too and what we require and have some comparative analysis of that particularly. That is the major annual filing document that I had in mind. We can certainly supply that.

Mr. M. C. Ray: Who files that? Is that by the listed companies?

Mr. Beck: Yes.

Mr. M. C. Ray: What about requirements of brokerage firms and mutual fund requirements?

Mr. Beck: They are likely substantially similar, although I feel pretty confident in saying that the Americans are probably more detailed than we are, just because they are in almost every area that I can think of in filing. But if you would like that for registered brokerage firms and mutual fund dealers, we will provide that also.

Mr. Black: I want to pick up on that a little bit and talk about investigations and enforcement and ask you if you could give us an opinion as to how Ontario would compare to other jurisdictions in this particular area, not only with the Americans, but with the Japanese, the British and so on.

Mr. Beck: I can best answer if we leave the Americans aside for the moment, and I will come back to that. I think a comparison with the other provinces is important too.

When I first came into the job, which was June 1985, the whole opening

of the industry was a very real question and was being hotly debated. I went to the other jurisdictions, to the United Kingdom and to France, because they were also considering opening their markets at the same time and, indeed, the United Kingdom has done so in a major way. France is starting, but it is well behind us and the United Kingdom.

I subsequently was asked to speak at a conference in Tokyo, but that was about a year later. One thing I was struck by, and I have said this in public remarks I have made elsewhere, is how undeveloped securities markets are elsewhere in the world. The development of the London market, the full development as we know it, apart from the London Stock Exchange, is only a very recent thing. It is a thing of the last three years. It has a huge, multibillion-dollar, and indeed in turnover, a trillion-dollar Eurobond market, but that sort of takes place outside of London or outside of anything in particular.

It revolves around western Europe, centred in London, but it is not a securities market as we know it with retail investment. They have had no securities commission, or anything similar to a securities commission, in London. They have just created a securities and investment board. In fact, it came into full operation about six or seven months ago and all the registrations have to be in place, I believe it is by April 15 of this year. The kind of investigation and enforcement that we talk about was done really at three different levels. It was done by the Department of Trade and Industry, it was done by the London Stock Exchange itself, and it was done by the Metropolitan Police Department, the fraud squad.

In France, the COB, as it is called, the securities agency, was very small and a very small industry. It is the same in Switzerland and the same in West Germany. The Japanese have, as a result of the MacArthur years following the Second World War, a complete set of American commercial legislation, including something that looks exactly like the Securities Act of 1933 and the Securities and Exchange Act of 1934. In between the word and the deed, there is a big gap and they have nothing like the staffing or the enforcement that the SEC has.

In terms of fully developed securities markets, until very recently, and indeed even today, one can say that there are only really two in the world, surprising as that may sound, and those are the United States and Canada in terms of a fully developed market. As part of a fully developed market, an essential part is a fully developed regulatory organization that is accepted as such by the players in the market. We would be second only to the SEC in terms of regulation and enforcement, and adjusting for relativities for size. I do not think we are very far behind the SEC, if at all, given the adjustments for size, and we are certainly the leading commission in the country by a very large margin in terms of what we do.

Having said that, as I said yesterday, we never have enough resources and what is the optimum number of people is always an open question. I think we are very effective for what we are and we can become much more effective. If I can just go on for one more moment, there is something else I have not said. As I pointed out, the securities commission, as it is structured today, really only dates from 1968. It was not done in a major way anywhere in Canada until 1968; from then we began to staff up.

The commission has gone through a real change, I think, in growth over the last five years. It is a much different commission than it was five years ago in terms of its staffing and in terms of its professional quality. Even in



the last three years we have made substantial changes, so that I would characterize the commission, if you like, as coming out of its adolescence and becoming a more mature, full-blown commission, much better staffed to do the job that needs to be done than it was even three years ago. That is my best answer to that.

Mr. Black: Do commissioners find themselves in conflict situations as a result of having to carry out more than one role, to make decisions, for example, and to order investigations and then be sitting in judgement of the results of those investigations? Is that a problem?

Mr. Beck: No, I do not think it is a problem, although in Canada it is perceived by some on the street as a problem. The commission sometimes wears two hats. It has to sign section 11 investigation orders, freeze orders, and it has to make decisions on whether a hearing takes place, and then a panel of the commission actually sits as a quasi-judicial tribunal, so that there is an appearance of conflict of interest there.

The Ontario Court of Appeal has had occasion to look at that sort of unusual structure and has said, in effect, that the Legislature put that structure in place and, in terms of its operation, it was all right. It gave it its blessing.

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However, following that decision, which is some five or seven years ago now, I guess, eight or 10 years ago, the commission, as a matter of practice, isolated a quorum--a quorum is two commissions--that makes a decision with respect to an investigation, a section 11 order, a temporary cease-trade, a freeze order, a decision to investigate, those sorts of things. The commissioners who take part in that do not sit on any subsequent hearing. We have tried to erect, if you like, Chinese walls, as we call them, internally.

Mr. Black: Is the public perception of that everything it should be, or is the perception somewhat different from the reality?

Mr. Beck: I think the perception is somewhat different from the reality. There is in fact some grumbling from time to time in the legal profession about it and about that mixed role. There is no question about that, and we are conscious of that. If you were to ask a cross-section of securities lawyers, there is no question you would hear grumbling, as I characterize it, about the perception of conflict.

Interjection.

Mr. Beck: The director has just pointed out to me that there is a case on its way to the Supreme Court of Canada called Barry and Brousseau where this very issue is going to be determined by the Supreme Court.

Mr. Pascutto: It involves the Alberta Securities Commission. It is a challenge to their structure under the charter.

Mr. Beck: Which is a similar structure to ours, and it is a charter challenge. I should say, for the record, that when the Ontario Court of Appeal gave its blessing to our structure, those were precharter days, there was no challenge under the charter, so it will be interesting to see what the Supreme Court of Canada has to say about the way we carry on. It may be that we will have to make a change.

Mr. Lipsett: I see there are two advisory boards that assist, the Financial Disclosure Advisory Board and the Commodity Futures Advisory Board. How frequently does the commission call on those boards to give advice, and what kind of consultation advice do they provide?

Mr. Beck: The Commodities Futures Advisory Board meets, I believe, is it bimonthly?

Mr. Salter: Quarterly.

Mr. Beck: Yes, it meets quarterly. Frankly, because the Toronto Futures Exchange has had such a difficult time getting off the ground and there is not a huge commodity market here, there has not been that much to do.

Just parenthetically, I would remark that the reason the Toronto Futures Exchange is having a difficult time is that the products traded are a mirror image of what is traded in Chicago on the Chicago Mercantile Exchange. It is simply too dominant for the Toronto market to get going, so the banks and the big dealers trade their currency and everything else in Chicago rather than here. It is a very small market, and the Commodity Futures Advisory Board has not had a lot to do.

But when there is a problem, it is called. It is used, as is the FDAB, in more than just in the formal setting. The deputy director can call one of the people or call a quorum and say, "Look, is this a problem? It looks like a problem" or "We have some disagreement here." It is a good sounding board of senior people who are right in the industry, who know the industry and are on firing line and help.

The FDAB is used more often by the office of the chief accountant with respect to accounting disputes, not all of them, but when there is a serious matter, an accounting firm is taking one view and the office of the chief accountant is taking another, and that can often happen in accounting. There is something called generally accepted accounting principles, which are not principles as you and I understand them, they are infinitely expandable. One way of proceeding may be OK and another way of proceeding may be equally OK, which is going to give you very different bottom-line results.

The Financial Disclosure Advisory Board is very useful as a respected, independent board for the chief accountant to take a question to and ask its opinion. It has been of enormous help in that sort of way, because it is equally respected by the firms and it is made up of a cross-section of senior partners from the firms, as well as of financial officers from corporations. It is not accounting firms alone, it is a good cross-section, so it is quite important. Apart from that, they meet twice yearly with the commission as a whole to discuss current accounting matters, current disclosure matters. Indeed, we have a meeting coming up in the next month. It is very useful.

Mr. Salter: To add a couple of examples for Mr. Lipsett, the Financial Disclosure Advisory Board has looked at, in the last dozen or so years, the proper disclosure of deferred income taxes on the part of real estate development companies, as one example; second, the proper accounting treatment for disclosure of line-of-business or segmented reporting by conglomerates. A third goes to accounting treatment by oil and gas companies. Does the company properly write off the full cost of all of its development work or simply the cost related to wells that have been successful? That is the kind of thing that the board helps us on.



Mr. Beck: Another one it has helped us on that we have had a lot of trouble with, and every regulator does, is franchising and recognition of income, as it is called, in franchises. A sale takes place through a franchise and then it is to be paid over a period of years. The success of that franchise is going to be very problematic, and a very aggressive way of accounting is to bring it all in as income immediately. As long as you are selling franchises and bringing that income in immediately, it looks like you are doing spectacularly well. The results two, three or five years down the road can be spectacularly different than you initially report. That is the kind of thing that we use them for, and they are very helpful.

Mr. Lipsett: I guess you conduct regular reviews of the importance of these advisory boards. I notice in this memorandum of understanding that review was done before March 31, 1987. I presume that was a positive recommendation to the minister.

Mr. Beck: Right.

Mr. Lipsett: Was that on both advisory boards?

Mr. Beck: Yes, I believe it was. I may say, again just to complete the record, we have another advisory board that is really not statutory that we created ourselves. It is something we call SAC, the securities advisory committee, which is a group of securities practitioners, exclusively lawyers in the securities business. If we are doing a new draft policy or thinking of a new piece of legislation or have a particular problem, we draft it internally. We send it to them. They serve, gratis as it were, as an informal advisory group. We say: "What does this look like? How does it sound in terms of how you see it from a practical point of view?" They have been very helpful to us, and it is a well-established group now. We are just starting to do a revision of the Securities Act, and we may give it formal recognition when we get around to amending the act.

Mr. Chairman: Why would you not have a businessman or two on that board instead of all lawyers?

Mr. Beck: That is a possibility, just as we do on FDAB; if not a businessman, then someone from the securities houses might be an idea. It is fairly technical, but of course that does not say it does not have practical impact once we implement it. Perhaps we ought to do that.

Mr. Runciman: Did Mr. Ray bring up the matter of filings?

Mr. Chairman: Yes. He was first on the list.

Mr. Beck: Yes, and I am going to supply from the Securities and Exchange Commission the 10-K and the material for brokers and mutual funds and try to do some comparison.

Mr. Runciman: This was not brought forward. I would appreciate hearing your views on it. There was a point Mr. Ray made earlier about the filings in the United States revealing information such as salaries of the big honchos of major Canadian corporations and so on, which simply is not available through the Canadian or Ontario systems?

Mr. Beck: That one was a perennial for adverse comment on the commission by the press--"Why don't you do this?"--prior to my becoming chairman. In the first place, we have improved that kind of broad-band disclosure.

Nothing that the commission has ever done, in my recollection, has been more controversial and raised more dust than the proposal that we do something quite similar to what the Securities and Exchange Commission does, in terms of disclosure of salaries of senior officers and directors. It raises an enormous storm, a political storm, and every time we have tried to do it, quite frankly, we have been backed off. Whether we will take another crack in the next legislation, I do not know.

Mr. Runciman: By the political powers that be, you mean. Is that a decision of the commission?

Mr. Beck: No, I did not mean to imply that. Letters start to fly to MPPs and ministers and articles appear in the press that it is nobody's business, this is interference and it has nothing to do with regulation. It is a terrific storm.

We invariably follow the practice of what we call exposure drafts. We never implement any new policy, any new regulation, any new legislation without, as we say, exposing it to the community for a one-month or two-month period for comment. We get the comment back, and there are three possibilities. Sometimes the comment convinces us we are so off the wall or out to lunch that we withdraw the thing altogether. Sometimes we amend it substantially. If we amend it so substantially that it is different, we will re-expose it for further comment. If there are just minor changes, we go final, as we say. If there are no changes, we go final. There has been so little support for it, except from some analysts, that we have been convinced we ought not to go that route.

Mr. Salter: I note too, Mr. Runciman, that the Quebec Securities Commission put the SEC rule--disclosure of individual salaries--in place in 1984. A year and a half later, they were backed off and changed back to the standard Canadian treatment, which is simply to show how much it costs to manage the company, gross numbers rather than individual disclosures.

Mr. Runciman: It will be an interesting question to discuss with the American authorities as well.

Mr. Farnan: I am sorry, I missed the last comment.

Mr. Salter: Our proper concern in Canada, we have been told, is to show investors how much in gross terms it costs to manage the company, and it is not properly the business of investors to know the individual salaries of the five highest paid, but rather, what the aggregate figure is.

Mr. Beck: Yes, that is right.

Mr. Farnan: You made a sort of comment that around 1984 there was a change.

Mr. Salter: I am sorry. In 1984 amendments to Quebec's Securities Act, that province's commission embarked on SEC-style disclosure of individual salaries. The outcry in Quebec was such that they changed back to the same model we have about a year and a half after that adventure.



Mr. Beck: You can look at the disclosure we require and know the gross figure that the directors and the senior officers are costing, so you know the total figure of what is being paid. It is split out in terms of salary, pension cost and deferred benefits, so you know that aggregate figure. That is not hidden. What you do not know is what the president gets as opposed to the vice-president, but you do know the aggregate cost of those senior officials.

Mr. Runciman: I would like to spend a couple of minutes on the Osler thing again that you mentioned yesterday. You take some offence to media reports that you did not really get involved until January.

Mr. Beck: Right.

Mr. Runciman: You said, "some time in the fall." I just wonder if you could be a little more specific in terms of when you were first notified by, I guess, the Toronto Stock Exchange in respect to having concerns about Osler and take us through the period of months in terms of how you, through your office, dealt with that, how you monitored it--a little more in-depth look at your involvement over that period of time.

Mr. Beck: I will have to check and I will get you the date. I have to check the date that Keith Boast, who is vice-president of--what is it?--

Mr. Pascutto: Vice-president of listed company and member regulation.

Mr. Beck: --right, member regulation with the TSE, called me. I will get that date. It is important. November 14? Yes. He called me when they were first aware there was a serious problem. We stayed in touch daily and two and three times a day immediately thereafter.

I immediately contacted our chief accountant, who is Paul Cherry, and asked him to make sure he was in touch with Boast and the accounting people at the exchange and Clarkson Gordon who were being put in. I think the term is special examiner. That is under the TSE bylaw. They have the right to put a special examiner into a member firm. Mr. Boast was in touch with them and, of course, I relied on his accounting expertise as to what was going to happen. I think that was through the first week or so. Mr. Boast and I then began to talk.

We were concerned right from the beginning about the retail client position and the loss that might take place there. They were very concerned about that. The major creditor of Osler was the Canadian Co-operative Credit Society, the Ottawa central clearing corporation for the provincial credit unions. They were the major creditor.

The great concern--and Mr. Boast and I discussed it right from day one--was that Osler not be placed into bankruptcy, that we be able to control the situation in an orderly wind-down. If it were placed into bankruptcy, the retail accounts would have been at risk, the margin accounts. They would have ranked probably at the end of the line. The game, if I can refer to it that way, was to keep CCCS from doing that and to keep them happy. The other major creditor at the time was the Bank of Montreal which, for advancing some \$20 million--I think that is the figure--to Osler over the last couple of years, had taken security and, among other things, had taken large positions in Vancouver-listed stocks--significant blocks of them--which, if they had to be sold, could not be sold at market prices, if at all. I mean it would be a distress sale.

We were concerned about a major retail loss. We were talking in the \$30-million to \$40-million range, which would have been a direct cost on the national contingency fund. That was a real concern at that time.

I am just going going by memory. You want it in detail and I am trying to reconstruct as best I can. About two weeks later, I attended a meeting in the evening at the Toronto Stock Exchange, attended by Mr. Boast, David Richardson, who is the head of Clarkson Gordon and is directing that overall operation, lawyers for Osler, lawyers for CCCS and myself, Don Leslie, who is the senior partner in Clarkson Gordon, the accounting company, and is the national examiner for the national contingency fund. He is the head NCF examiner.

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That meeting was talking about executing an agreement, which I think was subsequently executed at midnight or two in the morning that day with CCCS, whereby funds, approximately \$10 million, would be advanced to CCCS from NCF and CCCS would stay its hand. It would be a creditor for the rest, because I think the state of accounts was thought at that time to be that Osler owed CCCS \$38 million. By advancing them \$10 million, CCCS would not put Osler into bankruptcy and it would allow Clarkson and company to engage in an orderly wind-down. That agreement was subsequently executed and CCCS was satisfied.

It was then necessary subsequently to deal with the Bank of Montreal and to see it paid out so that those securities could be released back to Osler and the Bank of Montreal, again, would not put Osler into bankruptcy and try to realize on those securities.

Meanwhile, Richardson and his group were doing an examination. I suppose this would be another week to 10 days after that crisis point was passed and the Clarkson group was allowed to proceed with its work. It became clear to Clarkson and company--and I met with the exchange and at that point the director became involved and we had meetings--that it was a much more serious situation, that the investigation was going to expand, that there were concerns about how the place had been run, and it was not just a case of losing money.

At that point, we issued section 11 orders so that people could be examined under oath. We moved under the Ontario Securities Act, again ahead of somebody moving a company into bankruptcy, to put a receiver in. Actually, we named Clarkson and company as a receiver.

Mr. Runciman: When did that take place? January?

Mr. Beck: Mid-January, I believe. Clarkson and company then changed its hat from special examiner under the TSE to a receiver appointed by the court on the application of the Ontario Securities Commission. Apart from people from our enforcement branch, we named in our section 11 order, in our investigation order, as we have the power to do under the act, people from Clarkson and company as well as TSE people.

That whole process has been proceeding. The director has charge of that for us and we continue to meet as sort of a senior group: myself, David Richardson, Keith Boast and Michael Mackenzie, the new inspector of financial institutions, because CCCS falls under his federal jurisdiction and he is equally concerned, not only about the ongoing financial viability of CCCS but also what actually happened in there, and they have put in their special auditors, Deloitte Haskins and Sells.



That is about where we are today. That is my best recollection. I can certainly get you dates as to when Mr. Boast first made the call to me and the date of the evening meeting and all that.

Mr. Runciman: That is not necessary. You have made some reference, and I am not sure just whether they fit into this and, if they do, where. Is there a role in terms of this situation in respect to the Canadian Co-operative Credit Society?

Mr. Beck: I think that is triple-CS.

Mr. Runciman: That is the same--

Mr. Beck: That is the same. That is the Ottawa organization.

Mr. Runciman: OK.

Mr. Pascutto: Triple-CS is CCCS, Canadian Co-operative Credit Society.

Mr. Runciman: All right, fine. I did not appreciate that. What about regulation of that organization? How is that handled?

Mr. Beck: That falls under the federal inspector of financial institutions.

Mr. Runciman: So you have no hand whatsoever with respect to that organization.

Mr. Beck: No, we do not.

Mr. Pascutto: As the chairman mentioned, we are working with the office of the superintendent of financial institutions and it is working with us. We are working at a joint effort to make sure nothing falls between the cracks in our investigation.

Mr. Runciman: The future of the Canadian Co-operative Credit Society is still in doubt, though?

Mr. Salter: Mr. Runciman, back in January, Mike Mackenzie announced that the CCCS had, I think his word was "volunteered," a fairly substantial loss provision for its 1987 accounts. In the result, Mackenzie's office is content that CCCS has made due provision for any loss it might suffer.

Mr. Beck: I would not say the future of CCCS is in doubt. I do not think that is so in financial terms. Whether the provincial credit unions will be happy with CCCS, as I understand it, as a separate central clearer for their funds--an investor of their funds--I suppose is a different question. That is outside of our jurisdiction, but I guess they must be asking themselves some questions.

Mr. Runciman: You mention the national contingency fund, but I am at a disadvantage. I did not see the article in today's Post.

Mr. Beck: I read that.

Mr. Runciman: How do you react to that?

Mr. Beck: As I indicated yesterday, I think there has been some unhappiness about the call that has been made. The story in this morning's Financial Post said that not all the firms had answered the call, but if one reads the story, it is only a couple of small Quebec-based firms that are grumbling and are delinquent in their payment. I think the overwhelming majority--95 per cent or more--have paid.

There is a review going on now, of which we are a part. We had a meeting just last week with the committee. There is a current review, as a result of this, of NCF, of its structure, whether it is adequate to do the job and how it is managed. That is an Investment Dealers Association of Canada committee that will be reporting to us.

Mr. Runciman: That is not in response, though. Was this undertaken beforehand?

Mr. Beck: Subsequent to October 19, I wrote a letter to the IDAC indicating I thought there were a number of matters that we ought to review. One of them was NCF, and that started. Then Osler came, and that just gave greater impetus to that. There is concern in the industry and there is serious demand--and I think that is the appropriate word--in the industry for a review of NCF and its thing.

The other thing, as the director reminds me, is that the banks are now major players in the securities industry, having taken over, and they are concerned about NCF and the exposure.

As I say, there is demand that this be done. I am pleased to say we anticipated it somewhat when we wrote to the IDAC.

Mr. Runciman: I guess I just want to confirm something. I think you said yesterday, in respect to Osler, that you are going to be sitting down in the days ahead to review how you dealt with that situation and how you reacted to it. I do not suppose the results of such a review are something that, as a matter of course, anyone other than the people within the commission will be privy to.

Mr. Beck: That is right, sir. They would not be. But that review has to be seen in the context of another review that is arising, both out of Osler and October 19, which is under way through the office of the chief accountant. That is the audit process itself and early-warning signals. That is another study that is under way that really relates to that one. The results of that will probably manifest in meetings with the IDAC and the Toronto Stock Exchange in working out new agreements as to audit standards, early-warning systems and reporting to the commission. Of course, that will become public in a number of ways when those requirements are published.

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Mr. Farnan: What precisely was the problem with NCF?

Mr. Beck: Let me take a step back. I think there have been four occasions when the national contingency fund has been required to put up funds to protect retail clients' positions. Each one of those has been a result of fraud in the firm. They have all been in the area of \$1.5 million to \$2 million.

Mr. Farnan: Was there not a larger one?



Mr. Beck: I think they have all been from \$1.5 million to \$2 million. The Osler hit is in the \$16 million to \$20 million area. I think firms all of a sudden woke up or said to themselves: "Osler is a pretty small firm and this is costing us \$16 million to \$20 million. What if we get a slightly bigger firm?" All of a sudden, they realized what the exposure really might be under NCF, and that concentrated people's attention on the structure and the exposure. In fairness, it concentrated our attention too on the adequacy of the NCF, on the monitoring process. I think we are all reviewing the position.

Mr. Chairman: When was the last time Osler asked for an increase in its leverage? Any idea?

Mr. Beck: I do not know that.

Mr. Black: In looking at the list of your commissioners and some of their backgrounds, they all appear to be people from the accounting profession, from the legal profession or involved in the securities industry. Is that kind of background essential for commissioners? Along with that question, are the interests of consumers looked after if all of your commissioners have that kind of background?

Mr. Beck: Is it essential? I do not think so. Some people in the securities area say there is a lot of magic in it and unless you really know the business and understand the act, you can never figure it out and work. It is not so complex that people cannot pick it up fairly quickly. Having said that, I think the interests of consumers are quite well protected. Commissioners really do appreciate that this is an essential part of the task, and that is our starting point in terms of the operations of the market: What is the risk to the investor and what is necessary in terms of investor protection?

If one looks at the list there, you will see Timothy Reid, who is an economist by training, a federal civil servant subsequently, now dean of the faculty of business at Ryerson Polytechnical Institute. He does not come out of the industry as such. Alfred Holland is an accountant by training but has been a businessman all his life; he has not practised accounting. Malcolm Taschereau is a mining company executive. I think there is a good cross-section there. Frances Carmichael really comes out of the insurance industry and corporate planning.

Mr. Salter: If the proof of the pudding is in the eating, it might be instructive to look at the commission decision in the Canadian Tire case last year, a ringing decision for the rights of the retail shareholder. It was a good cross-section of the commission, Mr. Beck, that joined you in that decision.

Mr. Black: On the other hand, from the perspective of the public and its confidence in the securities industry, might there be some advantages to having a commissioner or two who were seen as being consumer advocates, if you like?

Mr. Beck: Yes, I would not disagree with that. Again, you would hear some objection, I am sure, on the street and in the industry saying, "What do these people know about the securities industry" sort of thing, but I would not pay a lot of attention to that. It may be that in the two vacant positions we have, it might be a useful idea to broaden out in terms of the type of person we appoint. I can see the merit in that.

Mr. Pascutto: A related point is that in the last year or so we have established contact, I think for the first time in the agency's history, with the Consumers' Association of Canada, and we have tried to involve it in the development of our new junior resource policy. That is an area they have a particular interest in. The sale of speculative securities to unsophisticated people is a concern of ours, it is a concern of theirs, and we did involve them in the development of that policy. As well, we have talked to them about other things, such as the development of a brochure to educate investors. In the last year, really last September, the commission produced its first brochure for investors. I am not sure whether copies of that were sent to members of the committee.

Mr. Beck: I think it is in the binder.

Mr. Pascutto: We were quite pleased with the brochure. We are circulating it to all the libraries within the province and to consumer information offices. An investor organization has arranged to publish the brochure in its monthly magazine. We are beginning contacts with financial institutions to look at having them distribute it through their offices. We have recently had an order placed by Royal Trust for enough copies of the brochure to distribute to all its shareholders and also to make it available in all its branches so that when customers come in, they will be able to pick up a copy of the brochure.

This is a copy I have with me. If members of the committee do not have a copy, I can arrange to have copies distributed. This is an initiative we have taken within the last year to improve the communication we have with investors.

Mr. Beck: We also use, to good effect, the Consumer Alert service of the Ministry of Consumer and Commercial Relations, which is useful. We used that, for instance, in leveraging on mutual funds. Unsophisticated investors were being offered 100 per cent leveraging by some of the financial institutions, which were in fact urging them to take more margin than we thought was useful, in the theory of about a year or a year and a half ago that the market was going to go up for ever. In simple language, we did an example that showed what would happen with leveraging when the market came down. That was highly publicized both in the press and through Consumer Alert, and I think it was very useful. Behind the scenes, we told some of the financial institutions that we thought they were getting a little reckless in pushing money, in pushing loans on people for mutual funds. That has had the effect of calming things down a little bit.

Mr. Black: One of your mandates is the licensing of traders. Can you make some comments about the standards of competency and integrity that you look for in traders? How does that compare to what similar agencies would do in other jurisdictions?

Mr. Beck: They have to pass the Canadian securities course. There are level 1 and level 2, depending on what they are going to do. We monitor those courses. Then, if they are going to be senior officers or directors, in addition to that they have to take the management course, the senior officers or directors course, and they have to pass that; if they are going to be dealing in mutual funds, then the appropriate courses for that.

We get a full biography of the individual. We know what his background is. We do a domestic police check, and we are hooked into the Royal Canadian Mounted Police national computer, which is itself hooked into Interpol. We do a complete check, and every once in a while, that check does turn up things. I think we do a fairly effective job.



Mr. Pascutto: One of the pieces of material that we provided this morning to the committee was a list of legal proceedings that we have in process. A number of those proceedings are against both firms and individuals that are registered with the commission. So we have a number of cases on the go where we are taking away the registration of individuals and looking to other sanctions against those individuals as well.

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Mr. Black: Do you have a feeling as to how your standards, if you like, would compare to those of other jurisdictions in the same area?

Mr. Beck: I think it is done pretty well the same way across North America. That is, the industry itself is relied upon to set the standards and set the exams, and that is the proof of competency. Then the background checks are done both by the self-regulatory organizations and by the agency itself. I think they are broadly similar and I do not think we have had serious problems that way of letting either incompetence or those with questionable backgrounds through, although obviously the level of competency of the registered representatives varies pretty dramatically.

Mr. M. C. Ray: I hope all of the hustlers are in Vancouver now.

Mr. Beck: It is interesting. When we talk to the Royal Canadian Mounted Police, we track them around the country. At one time they went to Quebec when Quebec was trying to build its market some eight or 10 years ago. Then they realized that that was no way to build a market, so they chased them out and they went to Vancouver. Vancouver, in fairness to Vancouver, I think has been cleaning up its act a lot and is chasing some out.

A lot went to Amsterdam. It is a bit of a Canadian embarrassment. I guess it arises out of the junior natural resource market, but a lot of these people who operate around the world seem to be trained in Canada. They went to Amsterdam and we helped the Dutch, in fact, write legislation and chase them out of Amsterdam. The last time I checked with the authorities I said, "Where are they operating now?" They said, "Ireland and Spain," so they run around the world.

Mr. Pascutto: You may also recall reading, perhaps about a year ago, that someone who is very well known in Ontario, Mr. Rosenberg and associates, was looking to set up a securities operation in St. Kitts, so it is a Canadian area of expertise that seems to be exported on a worldwide basis.

Mr. M. C. Ray: It relates to the Toronto Stock Exchange as well, I would think, and the past reputation, of which there may be some carryover yet today. That is why our concern here is about regulation and protection of the public from fraud on the one hand and these other activities that generate market turbulence. The most recent one, which I do not think you have commented on, is what are we doing about institutional program trading and its tie-in to the October crash?

Mr. Beck: Institutional so-called program insurance--securities insurance, as it is called, using the futures market, the stock index and programmed trading--has been much in the news. It is almost exclusively an American phenomenon. You have to have a broad and deep futures market. The futures index, the Standard and Poor's 300 and 500 index, which tracks the market, is the main hedging device, and that is in Chicago. For reasons I explained earlier, although there is a TSE 300 index, it is not widely used.

In fact, this is something I discussed with the Commodity Futures Advisory Board at the last meeting, within the last month, and there just is not a lot of that that goes on here. It is a sophisticated thing. Individuals do not use it; it is the large institutions. Canadian institutions who do that use the Chicago market, use the S and P 500, and although the S and P tracks New York, it is not a perfect hedge for the TSE. They can use it; they can program the computers so that they use it enough. They use that as the hedge, so it is not a problem here. In an international conference I was at, where we were discussing it, it is almost exclusively an American phenomenon.

Mr. M. C. Ray: On the options side of it, I am concerned about the other, just the straight market institutional orders generated by their programs on the open market. Was that not a factor in the TSE decline?

Mr. Beck: In our view, it was not as significant a factor as it was in the United States. It was an extremely significant factor in the US.

Mr. M. C. Ray: Was ours, then, a reaction to the New York market? Is that what it was?

Mr. Beck: The entire worldwide brake, I think, was a reaction to the New York market and no market suffered as severely as New York or had the problems that New York had on those two days.

Mr. M. C. Ray: What about this discussion of not permitting S and P trading and TSE index trading? Is there any view that you have on that? Are you going to encourage--

Mr. Beck: I do not have a firm view on that. We are monitoring all the reports on what has come out. I do not think that is the solution to the problem. These are new products.

Mr. M. C. Ray: Of what value are they?

Mr. Beck: Hedging can be a very important thing for investors if used properly. We cannot turn the clock back on the use of new products or on the use of sophisticated computer-driven programs. What I think has to be considered is the new market that this makes and the volatility. Some of the suggestions that have come up are price limits, so-called circuit breakers, where you would stop trading after certain position limits.

Those sorts of things are being discussed and these are very early days. They are enormously controversial for this very reason. It is something we are watching and monitoring, although I am frank to say that we are coat-tailing on the studies that are being done in the United States, where it is a much larger problem.

Mr. M. C. Ray: So you are going to wait. Is there anything really actively happening within the Ontario Securities Commission and the TSE?

Mr. Beck: Not within the OSC. I believe the TSE has looked at its position and does not see the need at this time to do anything.

Mr. Velshi: I have just three little questions. Yesterday you mentioned about the prospectus being filed before the marketing can take place. Does the commission have any authority to waive this requirement, and also, has it happened where marketing has taken place before permission has been given? I am looking at the condominium market, where you find sales are taking place subject to approval, that type of thing.



Mr. Beck: We have what we call the exempt market, where you do not have to file a prospectus. That is, if you are selling a security, government of Canada debt or a money market instrument, if disclosure is not needed--we assume the government of Canada or Ontario Hydro is good for it. If they are not, we are all in trouble; or, if you are selling to what we call a sophisticated purchaser, a major pension fund, a bank, an insurance company, etc., that is what we call the exempt market and you do not need a prospectus to sell to them.

Otherwise, no, you have to have a prospectus and we have no power to waive that. There are limited things you can do in terms of advertising before you get what we call the receipt for the preliminary prospectus and a very limited number of things you can do. You can get indications of interest, as it is called, but you cannot close the sale until you get the receipt for the final prospectus.

Mr. Velshi: The other thing is in terms of the monitoring system you spoke about that you are trying to improve and put in place as an early-warning system. How do you envisage doing a thing like that? If your auditors go in twice a year, whatever you know about is after the fact.

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Mr. Beck: That is true, although every firm has to file a monthly report and so you are monitoring their condition pretty well monthly. There is a spot check done on every firm, so that is going around all the time. These signals are picked up and there is also an informal network that goes around too; that is, firms will know when another firm is not in such good shape.

Mr. Velshi: Finally, if you were writing this report we are planning to write, what recommendations would you make?

Mr. Beck: That is a difficult one.

Interjection.

Mr. Beck: I do not know. I would need some time to answer that.

Mr. Pascutto: More resources.

Mr. Beck: Yes. I knew the director was going to say that. He is always after me. I think to make sure that it is adequately resourced, and perhaps a little more flexibility with respect to government strictures on personnel policies and budget restrictions, a recognition that special cases come up which can all of a sudden jam you up with a major investigation. The government has been good about that, but it gets costly and takes a lot of resources so that you have to go and ask for a chunk of money to do something.

Mr. Velshi: All in all, you are quite happy with the system as it is working?

Mr. Beck: Yes, I think so. We are happy. But I think resources are going to be a major one. The industry is growing dramatically. In terms of the questions that have just been asked about program trading and the internationalization and the remark I was making about the OSC really coming out of its adolescence, it is going to become a bigger, costlier agency. On the other hand, we have adjusted our fees. We are not only self-funding now;

we are in a surplus situation. I think that will remain in place and I hope government will continue to recognize that.

Mr. Chairman: Do the civil service guidelines apply to your organization as far as salaries go?

Mr. Beck: Yes, they do.

Mr. Chairman: Who sets the chairman's salary and the vice-chairman's salary?

Mr. Beck: The chairman's initial salary is a matter of negotiation at the time the chairman comes in. As chairman, I am in the ECP-5 category, which is an official civil service category.

Mr. Chairman: About \$120,000?

Mr. Beck: I wish that were so. In fact, I have no embarrassment in saying it is \$96,000. The vice-chairman is a permanent civil servant and he is in the ECP-4 category.

Mr. Chairman: What does he get?

Mr. Salter: It was \$84,000 last year.

Mr. Chairman: Plus whatever his other job is.

Mr. Beck: No, he is full-time.

Mr. Chairman: Oh, he is on full-time. OK.

Has the Provincial Auditor ever done an audit?

Mr. Beck: They have not for the past few years. An audit is scheduled. We have been informed of that. It will take place, as I understand it, within the next six months. We are on the roster.

Mr. Chairman: We were hoping to be able to finish with you this morning.

Mr. Beck: I very much appreciate that.

Mr. M. C. Ray: One final question. It seems to me the direction we are going in is that with more regulation we are hoping we can prevent the problems the public has with the securities industry now. Is that, in your view, true or is the OSC to remain kind of reactive rather than proactive in seeking out possible problems?

Mr. Beck: I think that we and every other securities agency will always be a combination of both proactive and reactive. We are constantly setting new rules and new policies that change the way business is carried on. Whether it is what was called soft dollar commissions in mutual funds, as an example, mutual fund advertising or sales incentives, we change conduct out there. There is no question about that. But in a major way we and all other agencies will always be reactive. Something happens, you catch up, you do an investigation and out of that come new rules.



As somebody who once wrote a book on the industry said, "It's the money game," and you should never forget that. That being the case, there are just enormous temptations every minute of every day. It is an enormously complex industry and getting more complex because of what we were talking about--computer trading. The ability of an agency to keep up and to monitor is extremely difficult, so there will always be, I am afraid to say, a substantial reactive element. We hope we are staffed to be proactive also.

Mr. Salter: If I could add one footnote there, the commission has worked hard to help the self-regulatory organizations work hard at policing themselves. The Windfall Oil and Mines scandal was almost 25 years ago. The Toronto Stock Exchange was the first to move to clean up its act in 1965. I know, because I was in private practice then and some of my clients left for Vancouver.

Mr. M. C. Ray: It is extremely important from our perspective, I think, as representatives of the public. The October crash was a once-in-a-lifetime event.

Mr. Beck: We hope.

Mr. M. C. Ray: We hope. Many people have been hurt financially through the purchase of what they thought were secure mutual funds. The public repercussions of all that, I think, are extremely important, and they look to you for protection.

Mr. Beck: I appreciate that. We can never protect them from market breaks, but as I referred to earlier, the leveraging warning we issued saved a lot of people a lot of money and made them realize that what goes up can come down, and they can get in way over their heads by leverage. That is the kind of proactive thing that we try to do.

Mr. Chairman: Have you had any policy changes since the Argosy collapse?

Mr. Beck: I think both the intra-agency and interagency communications are 1,000 per cent better than they were. I think the office of the general counsel and the chief accountant within the commission has given us a quality of oversight and expertise that we probably lacked at that time. I would like to think we are a more effective organization than we were at that time.

Most important, I think the creation of the Ministry of Financial Institutions, splitting off that ministry from the Ministry of Consumer and Commercial Relations, was a very wise thing to do. Financial institutions, including securities firms, had become too big and too important an area to be a small part of another itself, huge ministry. Having a separate deputy and a separate staff able to focus on that thing really relates to the Argosy question, our communication and all the rest of it. I think it made a big difference in our relationships in communication.

Mr. Chairman: Why would you not bring in some regulations with regard to financial institutions that no more than 10 per cent could be owned by any one person? I think it can be 50 per cent and 25--

Mr. Beck: At that level for trust companies and the rest, that is an MFI matter. There has just been a rewrite from A to Z, in terms of the trust companies act, doing that sort of thing.

Mr. Paschutto: If I might add a couple of other points that are related to Argosy, there is a ministry task force that we are participants in that is studying the question of mortgage syndications and improving the regulation of mortgage syndications.

We have done a lot in the last few years, in particular in the last year, to improve our communications with other regulatory agencies, to improve communications with the office of the superintendent of financial institutions.

Our computerization program will enable better communications internally within the commission. One of the problems that developed in Argosy is that there are dozens of sets of files in different parts of the commission. What computerization will do is allow someone in one branch to access all the different files in all the branches on a particular matter.

Finally, I mentioned yesterday that we have a staff training program that is on tomorrow, and the very first item on the agenda is to review for all the staff who would not have been around during the Argosy period exactly what happened in the Argosy matter, the kinds of problems that can arise and how we respond to those kinds of problems. We are trying to educate our new staff as to the kinds of problems that can develop to make sure they do not recur.

Mr. Chairman: I have one more question about the structure that we have here in Ontario. You have travelled broadly. Can you indicate to us if we are structured much the same as they are in other jurisdictions?

Mr. Beck: Yes, I think so. I think, and this goes back to what I said at the beginning in response to a question, other jurisdictions are looking at us. They look to Ontario and look to the Securities and Exchange Commission. It is interesting that around the world they look at Ontario because it is more to their taste. It is not quite as complex as the SEC, not quite as rule-driven, so that it is our model that they are looking at, but subject to making changes. I think you will see substantial similarities in how it is being done.

Mr. Chairman: Thank you. I appreciate your appearing before us. We have had some tough questions and you have answered them very well. I am sure we will be making a small report which I hope will be satisfactory to all.

Mr. Beck: We will provide that other information that is asked on filings and comparisons with the SEC.

Mr. Pascutto: If any members of the committee have further questions, we would certainly like to make ourselves available. If there is any interest in attending our premises and seeing how we are structured, we would like to help. We have filed some additional material today. If people have any questions on that, and we can help members, we would be pleased to do so.

Mr. Chairman: I have one and I will ask after we adjourn.

The committee adjourned at 12:12 p.m.



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

PENSION COMMISSION OF ONTARIO

THURSDAY, MARCH 10, 1988



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)  
VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)  
Black, Kenneth H. (Muskoka-Georgian Bay L)  
Breaugh, Michael J. (Oshawa NDP)  
Dietsch, Michael M. (St. Catharines-Brock L)  
Furlong, Allan W. (Durham Centre L)  
Lipsett, Ron (Grey L)  
Martel, Shelley (Sudbury East NDP)  
Runciman, Robert W. (Leeds-Grenville PC)  
South, Larry (Frontenac-Addington L)  
Velshi, Murad (Don Mills L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh  
Nicholas, Cindy (Scarborough Centre L) for Mr. Furlong  
Ray, Michael C. (Windsor-Walkerville L) for Mr. Dietsch

Clerk: Arnott, Douglas  
Clerk pro tem: Mellor, Lynn

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Pension Commission of Ontario:  
Kruger, John P., Chairman  
Hawkes, Robert H., Superintendent  
Gordon, Lynne, Vice-Chairman



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday, March 10, 1988

The committee met at 10:07 a.m. in committee room 228.

AGENCY REVIEW  
PENSION COMMISSION OF ONTARIO

Mr. Chairman: I call the meeting to order. We will patiently hear from all parties. This morning we have with us Mr. Kruger from the Pension Commission of Ontario. Mr. Kruger would like to introduce who he has with him this morning for the record.

Mr. Kruger: On my right and your left is the vice-chairperson of the board, Lynne Gordon, whom I am sure you all know. On my left and your right is Bob Hawkes, who is the superintendent of pensions in the commission. We have over there Leonard Lu--would you like to stand up, Leonard?--who is the director of operations of the commission. That is the area that does the computer, the keeping of the money and the front-end processing of pensions; and Ian Wollach, who is the director of the secretariat. Ian has the actuary and investment analysts and all of the technical stuff like that.

It is a pleasure to attend your committee and to answer any questions you might have. I have no opening statement. Your research staff did an excellent job.

Mr. Chairman: OK. I will start off. I have a couple of questions. I would like to talk about surpluses and how you are dealing with that, and the other one is with regards to indexing of pensions and how Bill 170 is going to function.

Mr. Kruger: First of all, on surpluses, on December 9, 1986, the government brought in a moratorium on surpluses from ongoing plans--I came into the commission in October 1986--and that moratorium effectively ceased any withdrawal of surplus from ongoing plans. Recently, when the government received the Friedland report, the Treasurer (Mr. R. F. Nixon) announced at that time that there would be a freeze until such time as the Legislature dealt with the formula or formulas to be applied to the mandating of inflation protection in pension plans.

Right now, on any windup, there can be no withdrawal, and the regulations have been brought forward. No withdrawal from the pension plan is permitted. The only exception to that would be if the surplus is to be distributed to all of the employees. If the commission is satisfied with all other aspects of the windup, it can proceed. If there is an agreement between all of the employees who might be entitled to any of the surplus and the employer, then the commission can look at that and use its own discretion. Generally, there can be no withdrawal then, and it is stopped.

If they are converting and it is just changing from, say, a defined benefit plan to a defined contribution and the whole intent of that is to bleed the surplus, they are stopped from doing that in the windup. However, if it is the intent to change the plan and go forward with another type of plan to the benefit of the individual members of the plan, then the surplus might

be used to help in some of the funding. In any event, I point out that since January 1, 1988, the whole of the surplus question has come under further restriction, even apart from the moratoriums.

We now require that when all pension plans actuarially compute how much is the unfunded liability, it be done on a solvency basis as opposed to an ongoing basis. I might explain what that is. On an ongoing basis, the actuary will compute out all things being equal, and the plan continues on. If he takes the assets and measures them against the liability on an ongoing basis, whatever is the unfunded liability is then described as unfunded on an ongoing basis.

On a solvency basis, which is more conservative and, actuarially speaking, probably the better way of doing it--and this is a consensus item, I might add, through all of the provinces--the actuary has to compute at the time that he does his review, if that plan was to cease immediately, all of the liabilities coming forward. This means that a lot of the plans on an ongoing basis will have less of an unfunded liability than those on a solvency basis. That is the net effect, so that eats into the surplus.

There is the requirement also that each plan has to have two years within it. Quite apart from whatever the liabilities could be, they project forward two years, and it has to retain that as a cushion within it. So that eats into it further. That is the situation with regard to surplus. The committee might be interested to know that, as I say, since October 1986, when I came on the commission and the moratorium on ongoing surpluses was put in, only \$382,000 was actually withdrawn before the moratorium came into being.

Mr. Chairman: I had a phone call last weekend from a person who worked at West Bend in Barrie for 20 years. The company changed names. Apparently another company is taking over, and people are trying to get their pensions out of the first company, where the person has worked for 20 years. There seems to be a problem in getting that settled.

Would they be going from one pension to another? I do not have the full background on it, so I do not know. I am just trying to find out why that would not be wrapped up and probably go into another pension.

Mr. Kruger: Do you know anything about West Bend?

Mr. Hawkes: I do not know West Bend, but I know the answer.

Mr. Kruger: OK. We know the answer to it. Do you want to go ahead?

Mr. Hawkes: There is a provision in the act. Two things can happen on the sale of a business. One is that the original employer may choose to wind up his existing pension plan. The second is that the new employer may assume and take over the plan. In some cases where you have a bargaining unit, and this has happened in several instances we have before us now, there has been a requirement in the collective agreement for a specific pension arrangement and the new employer will set up what we call a mirror plan, which really reflects the same terms and conditions as the original plan.

In the West Bend situation, it will depend on what the nature of the agreement of sale is. In the announcement by the Treasurer back in February, he also dealt with the issue of surpluses on the sale of a business. In the act itself there are certain provisions dealing with the requirement for a sale of a business to make sure there is an evenhanded approach to the assets with respect to the previous employees.



If there is, for example, a split, the moneys are split evenly. The ongoing employer then picks up the old plan in some instances and assets equivalent to the liabilities are transferred over. If there are not sufficient assets, then the previous employer has an obligation to meet. Witness the Massey situation, where the previous employer passed on a pension plan with an ongoing deficit. At that point, the province obtained a guarantee from the vendor for the unfunded liability.

Mr. Kruger: I would like to say two things on all these matters. If anybody has a question from a constituent, please pass it on to us because sometimes the constituents will be in touch with their members, which alerts us that there might be something going on within the plan. We welcome that. We do not see that as a chore. We are very aggressive in following those things through and giving you the answers because I know that is what is required.

The other thing is orientation. In all of these matters, the commission takes the position that, as a neutral body and a regulator, we look primarily to the interests of the individual member in that individual plan. That is where we are coming from.

Mr. Lipsett: I am not just clear yet on whether there are any reasons that an employer can take out surplus. Are there any situations where they can today?

Mr. Kruger: Yes.

Mr. Lipsett: Are there any other reasons that they could take funds out of the plan?

Mr. Kruger: When you say "take funds out of the plan," there is a debate that goes on as to the use of surplus moneys for what is called a contribution holiday on the part of the employer in a defined benefit plan. There is that side of the debate which says if the employer does that, it is a form of surplus stripping and the employer ought not to do that.

The other side of the argument says that is not so, that this is a funding device. The employer, by good management within the plan--after all, the employer has the responsibility in a defined benefit plan. If there is an unfunded liability, he has to pick it up. That is the pension promise.

So in those cases there is still no limitation against an employer using surplus funds to offset in a given year what his contribution might have to be to that plan. The amount of the contribution holidays taken are a very small portion indeed of the whole of the surplus question. The big surplus questions are involved, and were involved, in withdrawal of surplus from ongoing plans and withdrawal of surplus from windups, and that has now been stopped.

Mr. Chairman: Do any other members have any questions? Has there been any evidence that employers are switching to defined contribution plans as opposed to defined benefit plans?

Mr. Kruger: It is a little too soon to be able to tell. In the business community, there is something of a wait-and-see attitude until there is a decision made by the Legislature as to what the formula on inflation protection will be. There has been some movement from defined benefit plans to defined contribution plans, but it has not been major. The number of people who are covered by defined benefit plans that are regulated by the commission constitutes some 93 per cent. The rest are in defined contribution plans.

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I think it is fair to say that, in the future, with the relaxing of the rules on registered retirement savings plans, you will see some movement that will go on from defined contributions where they will want to have a locked-in RRSP so that they can take care of that in their own way. The other thing that we do not know is the number of people who would normally have a defined benefit plan who have elected--these are businesses--to go the route of a group RRSP, and we would have no knowledge of that. I can only say that from the number of plans that are in windup, that are changing, there is almost an even balance to the plans that are still being registered by the commission.

Mr. Chairman: I want to put a question regarding the staffing of your department. How many staff are there?

Mr. Kruger: We have an approved classified list--I am learning all of the bureaucratic terms--of some 68 people. However, we are going through a phase right now. Let me step back. When I went into the commission, the first thing we did was a management review and we found that there were total inadequacies within the commission. I think that was probably known to everybody. There have been substantial changes made. As a matter of fact, of the people I have introduced here today, none of them has been in the commission a year--or, probably one year, beginning April 1, I think it is. So I guess I am the longest-term employee, apart from Lynne, who was on the board a little bit before myself.

That management review indicated that we had to get into information technology. We were way behind. We did not have one word processor in the commission. We did not have an actuary, a financial analyst or any of these things. That is what the management review indicated was necessary. That occurred about two years ago. It was almost two years ago that that started.

We are now finding the pressures of the new act and the pressures of Massey and things like that are beginning to hit us. In the information technology plan, we have consultants looking as to what we should be doing to get ourselves to the state of the art. It is indicating that we do have some serious staff shortages. I have refused to bring on any new staff until such time as we could identify the areas where they are required, and I would expect that by around the summer we will have another MB-20--I have got that right--going forward to Management Board where we will be making the argument that the pressures on the commission have materially increased.

As a matter of fact, I have got some figures that might indicate to you some of the types of pressures that we are, in fact, encountering. Before January 1, 1988, we were running, on average--just to give you an example--assessments out on all the various pension plans, about 3,000 per annum, because, you know, there is a triennial review. We are now running at 11,000 per annum. These require people with knowledge.

Cost certificates--which you can process, but you still need to have some knowledge of pensions--were running before reform at somewhere around 4,000. They are now running at 11,000.

Phone inquiries were running about 40,000 per annum. We had estimated that they would be about 60,000, that they would go up this year. We are already exceeding that rather materially. Written inquiries are such that they are coming in at a pace where we are just maintaining ourselves. When I first went into the commission, the backlog through a whole variety of items was as



much as four years. We have got that down and we are maintaining it at about a year.

Now we are getting hit with the fact that under the new act, every pension plan has to put in an amendment, and that is not something you can give to a clerk. You have to analyse that; you have to make sure it is right. We have a program where we will eat away at that year, but the more we go ahead, the more we slip back, just because of the added pressures.

A lot of help can come from the front-end processing. We did not do any of this. There are a lot of things that are done when a pension plan comes in. I do not want to get into the detail of it, but there are a lot of things that can be computerized and you can produce hard copy. We are going to come to the day when the consulting companies will have a modem, we will have a modem, and we will produce the hard copy and so forth. When we get to that stage, we will be able to cover 20 per cent to 30 per cent of our front-end loading. We have people doing that work now. I want to see the result of that before we are able to determine how many staff are required.

One thing that has been very dear to the heart of our vice-chairman is the whole area of communication. We are just bringing staff on for that. You might want to say something to that.

Ms. Gordon: I just think it is vital, because the average person out there has had very little information, whether he has had pensions in his company or on the street, and there is a great deal of interest going on now. I was at the Ontario women's directorate the other day and business and professional women were saying, "We're getting inquiries, people are aware of the high profile of the pension commission." The act right now has been very important.

We have not had anything set up in the pension commission that puts out brochures and fact sheets and speeches and what is going on, in a very philosophical as well as--

Mr. Chairman: The final question I have is, how many staff increases have you had since you became chairman?

Mr. Kruger: It went up when I went in. It went up from about 55 to 68.

Mr. Black: Mr. Kruger, I have some personal interests, and also interest on behalf of my constituents, in the teachers' superannuation fund and the indexing portion of that fund. I wonder if you would care to make some general comments about the present state of the union.

Mr. Kruger: The present state of the union--

Mr. Black: I would like to be reassured, by the way.

Mr. Kruger: Yes, I know some of your background, Mr. Black, so I can understand that.

First of all, yes, it is true that section 2 of our bill says we regulate public as well as private sector plans. There is an exclusion. Let us do it on the funding side, first of all, which is, I think, the thrust of your biggest concern.

Both the Coward report and the Rowan report have now come out and been made public. The fact of the matter is the teachers' plan--and this is for the inflation protection portion particularly--is underfunded. When you take the plan itself and all things considered, by the year 2001, it is said that it will have insufficient funds, so something has to occur. That is within the province of the Treasury and Treasury is analysing that. They are attempting to get some type of a response to that.

Where it impacts on the commission is that in the Friedland and Coward reports they reference the fact that those plans are now being funded on a pay-as-you-go basis. The pay-as-you-go basis is all right, but you can take a look at the demographics of those plans, of the ageing of the people in the plans, and you will find that pay-as-you-go might be good for the next few years, but then you exponentially increase that as the population ages and you get into a very severe unfunded position.

Within the regulations that govern private sector plans, we do not permit pay-as-you-go. Pay-as-you-go is permitted only in the teachers' and in the public service superannuation fund. That is an exclusion under our act, because, after all, we make recommendations to the government but the government decides. In the private sector plans, we insist that they be actuarially computed. In other words, they take into consideration all of these factors to make sure the funding is clear.

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Within government, within the Treasury and the Ministry of Financial Institutions, there are reviews under way as to what the response of the government will be, and you have Dr. Slater, who has to synthesize, I believe the word is, the various views of the people who will come forward. I am assuming he is in the process of asking for some responses. Presumably, when that is before the Treasurer and the government, they will then make a decision as to how they are going to handle this.

I think it is fair to say, as we look at that and as we look at the impact of Friedland on the private sector plans, that somebody has to pay. That is the simple bottom line. The struggle is there are a lot of things that people do not understand about Friedland and I think a lot of people on the street do not understand this: there is no retroactivity. In fact, if you were to say to an average person on the street, "Next year you retire with \$400 a month," he would say, "At least, it is inflation protected." It is not. That is Friedland. The government is struggling with that.

We at the commission have the responsibility under section 97 of the act to give advice to the government. We intend to do that. We cannot advise it on Friedland; that is a government position. But we are going to look at the overall thing from the best view of pension plans, and then the government can take our advice or it need not take our advice. It will decide.

As far as the teachers, that is on the funding side. On the benefit side, they are regulated. They have to conform with the act. We are in constant dialogue with them and the advisory committee. What is the name of that committee?

Mr. Hawkes: Which one?

Mr. Kruger: The Public Sector Pensions Advisory Board. We are in constant dialogue with them, and a bridge has been established between the



commission, particularly with the superintendent, and the administrators of those plans. Our concern goes beyond just the teachers and the public service superannuation fund, of course. It goes to all the public sector plans, such as the Ontario municipal employees retirement system, and particularly Hydro, because if inflation is mandated, those plans of course will have an impact. Whereas historically they have given ad hoc increases, the moment you mandate something, you have to compute that out actuarially.

Do you have something to say on the dialogue, Bob?

Mr. Hawkes: I am meeting on Monday with the public sector plan in general. But there are substantial reports on the state of the nation in terms of both the PSSF and the teachers in Mr. Coward's report. There is a much larger report that was prepared that deals individually with each of the plans, the state of the funding, how much money has gone in, basically looking at, as they call it, the pension deal. It has been suggested that is something that should be addressed in each of these plans.

Mr. Black: Specifically, how did the teachers' plan come to be underfunded? Are there other public plans that are underfunded as well? I understand it is just the indexing portion.

Mr. Kruger: Primarily, yes. We actually have on our commission a person who in his younger days was in a chartered accounting firm that did the teachers' plan. He said no, with the amount the teachers are paying in and with the amount the government is paying in, that plan is all right. It is not the plan itself; it is the inflation protection portion.

How did it come to be underfunded? I think that is being explained by Mr. Coward. When the plan was set up, and I could understand this, the government of the day had to make a decision on inflation protection. One decision it made, obviously, was to fund it on a pay-as-you-go basis. It would have been just a little bit too much to try immediately to fund it otherwise. That was a decision that was made, and it has continued on that basis.

You have improvements that have been made to the plans themselves. You have the fact that the eight per cent now is enshrined. The pay-as-you-go is really now getting to be inadequate. I think that is one of the inevitable results of pay-as-you-go. I think that may have been known to governments, could have been projected some time ago, but I guess the decision of the day was not to do that. I cannot fault that decision one way or the other. I have no comment on it, except to say now the problem is coming home to roost.

As we look at that, let us look at things on a broader base. The Quebec pension plan will be completely bankrupt by the year 2001. In Quebec right now, seven people can pay for themselves all of their health benefits and two thirds of the pension requirements. The extra one third comes out of the reserve fund. By 2001, there will be no reserve fund. Only two people will be around who will be earning money to pay for the health care system and the pensions.

What you have is also a problem of demographics. I do not want to get really complicated on it, but in Quebec the fertility rate was 1.5 and is dropping down to 1.3. In Canada, it is about 1.6. We are not renewing ourselves. My advice to my daughter, who is 30 years of age, is: "Have lots of babies. Make sure they are healthy. You are going to need them to support you in your older age." It is a crisis of the western world; it is not peculiar to us.

I can say further that the other provinces are looking very closely at these two reports because Ontario is the leader. Mr. Hawkes and I are going out to a meeting of the Canadian Association of Pension Supervisory Authorities, where the funding of the plans is very high on the agenda. I would expect that what goes on in Ontario is going to be very closely watched because this problem is not particular to us.

Mr. Runciman: I would like to ask a couple of questions about the Massey situation and the shortfall in the pension plan. How did that come about, and is there any way the pension commission should have been on top of that situation and aware of the problems that existed there in terms of the pension fund?

Mr. Kruger: First of all, when we received our triennial statements, we knew it was in an unfunded state. Yes, we were aware of it. Under the old act, they had 15 years to pick up any unfunded liability. That is the way it was. Today, we have cut that back to five years. As the union negotiated over time with Massey, it received improvements to its plan, and that did not help the unfunded liability of the plan at all. It was recognized there was a substantial unfunded liability. The plan got to the stage that when the reorganization of Massey went on, there was an agreement made with Varsity that it would support or give certain financial support towards the unfunded state of the Massey plan. It was recognized by everybody, within government and so forth.

That was a de-escalating guarantee. It de-escalated down to \$25 million, which it stands at today. If Massey Combines had continued in operation until May and then been put into receivership, that \$25 million would have disappeared. Yes, the commission was aware of it. There was really nothing we could do. We were constantly in dialogue with the Canadian Auto Workers. We were in dialogue with Massey. It was in the nature of the business. As the improvements went forward at each negotiating session in collective bargaining, the unfunded liability also went up. As far as figures go, we are in the process of doing that.

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It takes about four months to determine what the windup status of the plan will be. Bob can talk to this, and he can give you a real update because he is now the administrator of the plan. We have just issued an order at the commission level to him to see that this is under the pension benefit guarantee fund and there is a 30-day waiting period for people to object, and after that is over, the commission will deal with it and we will go forward.

We, and the staff down there, have to determine what each individual employee is entitled to, and then we will add all of that up. All the figures that you have seen are staledated, and we really have no idea. The only thing we can say is that there is going to be a shortfall; quite apart from the \$25 million, there is going to be a shortfall on the guaranteed fund.

You see, the fund was never, ever designed for the Masseys. The fund came in for a very good social purpose, and this was at the time of CCM, when that went into bankruptcy, and also there was another place called Fittings. These were for smaller companies which, in the course of their market, might find they have older workers; and while no other province has a fund like this, nor does the federal government, it seemed as though it made good social sense and good pension sense to try to support those people who had a defined benefit plan.



In fact, the evidence, which is quite empirical, as to what have been the withdrawals from this fund--it started only in about 1983--let me give you some figures of the type of claim there has been on the fund. In 1983-84, there was \$3,266; in 1984-85, \$76,500; in 1985-86, \$67,126. There was \$125,000, and CCM was \$1.8 million.

Fittings was a very sad case that occurred in Oshawa where the employees were older, they were all suffering from health problems, they could not get any other jobs. That impacted the fund to some \$3.2 million. That is the order of magnitude. Today the present assets in the fund are about \$6.5 million, and there are potential claims against the fund of about \$3.7 million. A Massey will be far greater than that amount. The fund was always designed for the small business.

I think this is somewhat of a problem that the government is going to have to think through, whether there should be some parameters put on this fund because the thing that concerns the commission--and we did point this out long before I came to the commission, when this fund was first set up--under our act, it is somewhat open-ended on these things. The commission at that time did point out to the government, "This is open-ended," but the government of the day said: "That is fine. We will go along with that." All that they did in taking the new act was to merely duplicate the words of the old act, in this particular section.

One of the alarms I had when I first came on the commission--it was soon after the problem with Chrysler. I asked the question, "What if Chrysler went down?" I think there are some very important questions that are going to face the government on this, and not only the government but the Legislature.

Mr. Runciman: How are the assessments or premiums for the fund worked out? What is the formula there?

Mr. Kruger: At the moment, the formula is \$1. When the fund was first set up, the theory, quite a reasonable theory, was that only those plans that were in an unfunded state should be assessed; because this was like a trust fund that is put aside, the theory being that, if you are in an unfunded state, you are the one more likely to go down. It does not necessarily follow. However, there was logic to the thought. So they used to say 0.02--is that it?

Mr. Hawkes: No, 0.2 per cent.

Mr. Kruger: Yes, 0.2 per cent of the unfunded liability in a plan would be the amount that would go into this trust account. As I say, from these figures, it was adequate.

When we saw that we were having problems, be it in the unfunded plans or in the funded plans, because the funded plans can go unfunded at any other time, we said that in order to get the money, it was \$1 for each member, and in addition, it is the 0.2 per cent. Now we are expecting that is going to generate for us close to \$3 million per annum.

Mr. Runciman: What has it generated from Massey over the past few years?

Mr. Kruger: Massey would be in there. I could not tell you specifically, but they would have been--

Mr. Runciman: It would not have been a significant amount.

Mr. Kruger: No, it is not. You must remember that the large plans are excluded from this pension benefit guarantee fund. First of all, it has to be a defined benefit plan. A government plan, such as the public service superannuation fund, the teachers' superannuation fund and all of the larger plans are excluded. They cannot have any draw on the fund.

Mr. Runciman: Is there some consideration of changing the formula that you have in place? There was a press report this morning--I did not see it--that the government is suggesting that the government itself is not going to make up its shortfall.

Mr. Kruger: Let me put it this way. The superintendent is obliged to bring forward recommendations to the commission and we, in turn, are obliged to bring forward recommendations to the government.

We are at the stage where one of the scenarios could well be that this is what the superintendent will bring forward. There are other scenarios he would have to bring forward. The government has not decided yet. We have not had it before the commission. It is one of the things we have seriously to contemplate, together with others. After that is done, we will suggest to the government, and it can take our advice or not take our advice.

There is a bit of a double-bladed sword in it that we have to be very aware of. We have said on these plans right now that you have to go to a solvency-valuation basis, and there is tremendous resistance by a lot of the large companies to go to that basis, particularly the large automotive companies. They are saying, "That just places us into a noncompetitive position, because we have to find more money."

If we start suddenly saying to them, "We are now going to impose a further liability on you to try to pick up the Masseys," it could be that some of the plans cannot--perhaps not the automotive, but some of the ones that are kind of marginal. So we have to analyse all of that and get some type of a balance.

It could be that if we try to recover the impact of Massey, it is going to take many years. I suspect that is going to be the case, if it ever does come up. Since this plan came in in 1983, in 1985, 1986 and 1987, particularly, there has been an acceleration of the claims against the fund. That is why I have said I think the government has to analyse totally what it is going to do on this.

In theory, it is quite legitimate that you should say this is like an unsatisfied judgement fund, but how far can you go? That is the balance, because one of the other obligations under section 97 of our act is for us to try to promote pension plans. They are being bombarded from a lot of sources that say, "You are doing this; you are overregulating; you are doing all of these things." We have to get the balance.

Further on the Massey situation, to bring you up to date, Bob, would you want to add to that? It will give me a chance to get a glass of water.

Mr. Hawkes: All right. Let me just give you gentlemen an update as to what we have done. Maybe I should amplify a couple of things the chairman has said. First of all, the question was about how this liability occurred.



When Massey Combines was established two years ago, there was an unfunded liability identified. At the time the agreement was reached, they thought money would be paid over by Varsity over a period of two years, as the chairman has suggested. In fact, those payments had been made by Massey Combines. Two payments were due and had been made of over \$6 million over the last two years, so they have reduced their liability. The guarantee was really structured in such a way as to cover that liability, assuming Massey went down within two years.

Where the balance of the liabilities occurred is the impact of Bill 170. Some of the liabilities that we are now looking at in Massey Combines relate to some of the improved benefits under Bill 170. That is part of the history of the Massey Combines thing.

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We were aware for a few weeks that this was likely to occur. We had met and discussed where we go from here. On Saturday last, Mr. Wollach of my staff and I, plus Penny Dutton, who is director of the employment standards branch, went to Brantford, met with the receiver and reviewed the receiving order, which I must say is a very narrow receiving order.

The receiver is limited in his scope to simply realizing on the assets. It has been very carefully worded to make sure that the receiver is not an employer. They did not want the ongoing liabilities of being an employer.

We were immediately faced with two issues. One was the immediate issue of getting the payroll completed, the moneys having been set aside in a trust fund. It still had to be completed. We at the pension commission have to rely on payroll records to complete pension records. Since I have also discovered that the board of directors had resigned and the officers had been discharged, I was left in the position of having to declare myself administrator, which means I take the responsibility to get this thing done.

I instructed the receiver to retain the payroll pension staff on an interim basis in order to get the records complete. We have a current question as to who is responsible for even preparing the unemployment insurance records. With the Treasurer's knowledge and consent, I have simply instructed them to go ahead and do it. We will fight about who is going to do it later, but if those records do not get completed, the people will not be able to get their unemployment insurance. Theoretically, it is a federal responsibility, but as I say, it is more important to get it done than argue about it so we are going forward with that.

What we will then do, as these payroll records and the pension records are completed, is prepare the entitlements on two bases--one is as if the plan was to continue--and then we will have to apply the guarantee fund limitations. The guarantee fund does not apply to everything. It does not cover improvements over the last three years, nor does it cover pensions in excess of \$1,000 a month.

The impact of that will be to reduce certain of the pensions that may be in pay as well as the calculations in terms of entitlement. We have to go through that exercise. That is why I am reluctant to put a figure on it.

We also have the Varsity guarantee, which I mentioned, which we will have to address. It is payable over a 10-year period. Therefore, if you look at it

from a current value standpoint, it is not worth \$25 million. It is worth whatever the present value of a cash flow of \$2.5 million a year over 10 years is worth--roughly \$14 million to \$15 million at today's rates.

Mr. Chairman: Mr. Runciman, do you have another question?

Mr. Runciman: Quite a few, Mr. Chairman, but I can leave the floor for a while, if you wish.

Mr. Chairman: All right. Mr. Velshi

Mr. Velshi: Mr. Kruger, you made a statement a little earlier that the number of group plans coming in equals those that are being wound up.

Mr. Kruger: Pretty well.

Mr. Velshi: You felt quite comfortable with that situation. If the scale tips in the other direction, what do you intend doing about that? Is there anything you can do?

Mr. Kruger: What we have to do about that is, first of all, determine--and we would see this probably in the windups--what is occurring in the windups. Why are they winding up the plan? I think we would analyse that and then we would see the type of plan that is coming forward to the commission. If they are all defined contribution plans as opposed to defined benefit plans, then we would research that. That is another part of our responsibility to see why this is occurring.

We would be in touch with the actuaries and so forth and ask: "Is there some specific thing in the regulations? What are the factors that are involved in it?" If it is something within the regulations, we can alter those because regulations are a living thing.

If, on the other hand, it was just the condition of the market, then I would think we have to face certain realities. Friedland made the recommendation that serious consideration should be given to the regulation of registered retirement savings plans. I have been out making a few speeches recently to associations. The life insurance association had a very pertinent question. If we did not do that, we would not need a pension commission in 15 years, if we are going to impose Friedland and inflation protection. That is what I hear.

A lot of this is talk. As I said before, there is a wait-and-see attitude out there to see what occurs. I think if there is a reasonable cap put on Friedland and if it does not materially impact business, certainly where there is a large plan and there is a large union involved, you are going to see very little shift away from defined benefit plan. It is in the smaller companies that you might see that.

Mr. Hawkes: In discussing the Pension Benefits Act impact, there are also the Income Tax Act changes, which we understand will now be introduced around March 21. These changes will now require a much more complicated calculation. From our information, this is going to have a significant impact on the smaller employers because each year they will now have to calculate the value of a defined benefit plan. That will then go to the Department of National Revenue, which will in turn be sending back to each of us on an annual basis our RRSP entitlement, so that you will then know that year what



you can contribute before February of the next year. We are going to get National Revenue's additional complexities added to what is perceived by some as being additional burdens on and under the Pension Benefits Act. The National Revenue impact on the smaller employer, I think, is going to be very real.

Mr. Kruger: We are exceedingly vigilant in this. If there is a problem, we are going to have to track it to see what we can do, if anything. Again, only 37 per cent of people in Ontario are covered by private pension plans. That is a concern to us.

Mr. M. C. Ray: Could I go back to the teachers' superannuation fund? You indicated, I think, that the teachers' superannuation adjustment fund is going to be in a deficit position, but what about the regular teachers' superannuation fund itself over time?

Mr. Hawkes: It is all in here. Just a minute. I will find it.

Mr. Kruger: As I recall, that is not in bad shape.

Mr. Hawkes: Can I answer that? There is a table 16 in Mr. Coward's report which really is his recommendation to government. He is suggesting that the cost for the teachers' plan be increased for both the members of the plan and the sponsors. They are looking at increases on the combined--and recognize that the present contribution rate is combined. The entries would go up from the current level of 8.5 per cent roughly for the public sector and 9.8 per cent for the teachers. It then gets into a question of investment risk because both the major public sector plans are currently with the government. One of the issues is, should these be invested only in government securities? That has a bearing on the cost. What the cost will be will depend on whether that recommendation is accepted.

Mr. Kruger: With regard to the thrust of your question, though, I think it would be fair to say that the greatest difficulty is because of the SABA portion.

Mr. M. C. Ray: The which?

Mr. Kruger: Because of the Superannuation Adjustment Benefits Act portion, the inflation protection parts of the plans. That is where the unfunding basically comes in.

Mr. M. C. Ray: Except that there are teachers, including, I think, the current chairman of the Teachers' Superannuation Commission, who will argue that there is a surplus in the general fund which can be used to offset the deficit in the other. I do not know. Is that true or not?

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Mr. Kruger: It all depends on the definition of "surplus." Now you get into the old argument. As the government put in the money and it is a defined benefit plan and the government in the end is responsible for it, the teachers will argue that any surplus in that plan therefore belongs to them. The government, on the other hand, would say it is a defined benefit plan and, under those rules, there is a real question whether it belongs to them.

If you talk about the surplus, that is a surplus at a point in time. But then you cannot really divide--and that is what Mr. Coward has pointed out--and say there is the parity of the plan and there is the inflation part of the plan. He says it is really one plan. His recommendation, very strongly, and it makes a lot of sense, is that it is about time you combined the two, both in the teachers and in the PSSF. It is one plan because the inflation protection in the plan is pretty well mandated. On that basis, he says there should be some increase by the teachers themselves in order to support the plan.

I think it is an argument which, if you take it forward to its conclusion, does not stand the test of logic.

Mr. M. C. Ray: Especially if you consider also the injections of government money into the plan previously.

Mr. Kruger: Absolutely.

Mr. M. C. Ray: Which the teachers are not inclined to do.

Mr. Kruger: That is the point of the other argument. That is the argument the government would make.

Mr. M. C. Ray: What bothers me is, why then are we embarking upon or have we embarked in the past upon increasing the benefits, for example, the recent window that was established for early retirement? Where was that idea initiated?

Mr. Kruger: That is something that is controlled by the people who control the plan. We regulate them. I can only say that if you look back in the way that you are looking back and say, "If it is in that position, why would you do those things?" I think you would have to go and ask those who are the commissioners of that plan.

I think it is pressure on the government. Let us be quite candid. The teachers are a very strong group. I think it is exactly the same for the PSSF.

If you were an actuary, you could reasonably argue that the amount of the inflation protection in those plans is probably too high. I question whether in the negotiations between the parties that would ever succeed in any reduction.

Mr. M. C. Ray: What powers do you have over it, or do you have any?

Mr. Kruger: None. We regulate. We make sure of three things. One thing we make sure of is that the plan text conforms to the act. We make sure that whatever they actuarially compute as being their liability and so forth, based upon the terms in that plan and the government regulations, is proper. We make sure that the individual members of the plan do indeed receive whatever they are entitled to in accordance with our act.

We have no say in the negotiations. We have absolutely no say even in the plan text. If they changed the text, they would merely inform us in the form of an amendment. We would see the amendment and we would make sure the amendment conformed with the act. We are regulators.



Mr. M. C. Ray: No matter how ridiculous the terms, you just ensure that the actuarial science is right and that the people get what they are supposed to get.

Mr. Kruger: In accordance with the act. It is for some of these reasons, I can tell you, the concern that not only ourselves but the other regulatory agencies across this country had, that we dropped the 15 years on special payments to pick up unfunded liability back to five. It is in view of this, because wherever you have a very strong union and these things are negotiated in the collective bargaining process, that is another reason why we went to the funding to be on the basis of not a going concern, but to be on a solvency basis. What we are trying to do, after the door has been opened and so on, we are trying to close it, to make sure all the heat does not get out and that people will still continue to have a reasonable existence.

Mr. M. C. Ray: That relates to a second aspect of this that I would like to ask about, and that is the future of portability and where you stand on public sector portability of plans, and the future of joint agreements. If we have one plan like the teachers' superannuation--

Mr. Kruger: We are meeting on that; from the point of view of the commission, the more portability you can get between the plans the better.

Mr. M. C. Ray: Yes, but when you have one plan going off like the teachers with a Cadillac plan, how does that help your goal of portability?

Mr. Kruger: Portability carries a price to it. Let me give you a personal example on my part. I came from Metropolitan Toronto; I was in the Ontario municipal employees retirement system; I came into the public service superannuation fund; for the first time, I suddenly had inflation protection. I owed the PSSF a considerable amount of money to bring my benefits up to standard, otherwise I would have had to go back in the number of years, so I have had to pay it in. That is the way it works. For each person who brings money into a plan--and there is a very simple actuarial table--it is asked how old are they; how much money do they bring into the plan; and what is the deficit that they have? Then they have to pick up that deficit.

Mr. M. C. Ray: That I understand. But where are we going in terms of mandated, legislated, compulsory portability as opposed to the joint agreement approach?

Mr. Kruger: There are ongoing discussions on that. On the plans that you talk about, the major public sector plans, those will be decisions by government, certainly not by us. What we are trying to do, if a person wants portability, and this is another concern: you have a plan and you are changing your employment from this company to another company; what we are looking at nationally is some type of a vehicle, similar to a registered retirement savings plan, where you can take that money, together with the vesting, and lodge it into this financial vehicle until you get other employment and if they have a pension plan, you can then transfer your assets into that plan. But if they have no plan, then you can continue on in this vehicle. That is from the private sector.

Mr. M. C. Ray: I can see it is a lot more difficult in the private sector, but in the public sector, in Ontario, what is your role in that? What I am getting at is the government is not going to do a lot. Let me put it another way. A very important component will be what the bureaucratic recommendations are on portability. I am trying to get a handle on what

direction the bureaucracies are headed, in terms of recommendation on portability of public sector plans only in Ontario.

Mr. Kruger: Precisely, we do not know yet, but I will ask the superintendent to tell you the general sense of direction.

Mr. Hawkes: History, as I understand it, between the public sector clients has been relatively straightforward because they have had agreements between them. If somebody moved from one plan to another, they essentially did a very simple calculation. Two times employee contributions moved across. The benefits were basically then continued under the new plan.

As we see under our act, the requirement is commuted value. With the advent of computerization, the requirement in the public sector plans, the thrust today--and this is the discussion among the public sector plans which they have asked me to sit on next week--is that they are basically moving towards moving commuted values over. So if your pension entitlement was worth \$50,000, the \$50,000 will go over, and it will buy whatever the benefit is in the plan into which you go. It may in some cases, depending on the nature of the formula, buy more, it may buy less.

As Mr. Kruger indicated, it could very well mean the individual would have to top it up. But in essence they are looking at using the straight commuted value, which is ultimately fair.

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Mr. M. C. Ray: The problem comes when one of the plans will not co-operate. You have to have a kind of two-way portability. In what direction are you headed?

Mr. Kruger: We have a rule that simply says, "commuted value". We do not force portability. The individual has three options. He can leave his benefit with the existing sponsor. He can move it to a locked-in registered retirement savings plan or he can move it to the new employer, assuming that the new employer will take it on. If the new employer does not, then he is left with either moving his commuted value or retaining his long-term membership.

Mr. M. C. Ray: Yes, but we say the goal of government policy is to enhance or increase portability. We hope bureaucracy is working in that direction, because that seems to be what the government is saying. Is that happening?

Mr. Kruger: That is a thing that is being considered by the public sector advisory board. That is the board that was set up to advise the Treasury as to how these things could occur. The public sector plans appear, before that board, and it is working on that. Our role in it is to give the technical advice that is necessary to make sure that anything they are doing, if it does get into the act in some way, is something we can live with and that we can properly regulate.

I would think you are correct. That is the general thrust, that it will not be anything that will be coming out of the commission. It is really not under our control. It is not within our power to even decide or recommend on that. We are doing a lot, as I say, in the private sector ones. That is well advanced with the other regulatory agencies.



Mr. Chairman: Could you give me your personal opinion on who owns the superannuation surplus? Is it 50 per cent for the teachers and 50 per cent for the province? Who owns that?

Mr. Kruger: I would not touch that with a 60-foot pole because I can tell you there is no precise response to that. That will no doubt be the subject of great legal argument when it finally comes down. Right now the teachers are involved in the process and they have actuaries working on this. They are looking at the recommendations of Coward to see what is going to be the impact of putting all of their investments out to the market. Perhaps that is one way that they do not have to increase in surplus.

That is an argument that has been raging for quite some time. It is something that I would not want to get involved in the midst of at all.

Mr. Black: I do not specifically want to discuss the teachers' superannuation fund. Does the commission have a role in sounding a warning when it sees a plan, whether it be private or public, that for whatever reason does not appear to be in the best interests of either the participants or the public at large?

Mr. Kruger: Oh, absolutely. What we do is we have certain powers under the act. We can go in, look at records, we can do all types of things. This would come up through a variety of monitoring devices that we have. We just changed the regulations.

For example, let us take the various things that could trigger this. The first would be, how are they investing funds? Are the funds being protected? We just changed over from what was called the basket approach, which was the old investment standards, into a prudent person approach.

Under the prudent person approach, you give much more latitude to the fund managers. The only way you can determine how well the fund is doing is to monitor it against known indices. We will do that, because they are required. There are several things that they require. They, first of all, have to outline in clear terms, for every member of the plan to see, what the investment policy of that plan is. Every member of the plan is entitled to that. They have to submit it to us, and we just make sure that it looks all right. We are not going to tell them if it is prudent or not; that is up to them. We will then make sure that their investments are in accord with that plan, with their statement. We are very specific on such things as conflict of interest and things like that. We have got very specific on those areas. In other words, we have tightened up considerably.

Each year they are to report to us, and we will then monitor this. If we see those indices are out, we will start asking questions. We have the right, and even what they have to tell us is in very considerable detail as to where the investments are going and so on, and if we find there is a problem and we are not getting the answers, we will send our plan auditor out to really dig around and find out.

We also have an obligation under our regulations to make sure that whoever is the chartered accountant, fund manager or whoever, if he sees something wrong, he is obliged to inform the superintendent. So that is on that side.

We control the other from the point of view of any amendment of the plan. They cannot alter a plan, and they cannot say to an individual, "I'm

sorry, I'm going to cut your benefits back." That can only come in the form of an amendment on the benefits side to the plan. We insist that that amendment be circularized to every member of the plan, and every member of the plan has the right to object directly to the commission.

Under the changes in the act, we have insisted on disclosure. We are very specific. As a member of a plan, you have every right to ask the administrator of your plan everything that is within it. You have the right to see all of the documents, and if they do not do it, you can come to the commission and we will let you see. You have that right.

So where we get the trigger, if something is going on in the plan, is through an amendment that does not seem right, and if it does not conform to the act we will not even tell them to circularize it, we will make sure it conforms. We will insist on the circularization. We will also make sure that within the document itself this does not trigger anything that might have been committed in the past.

What we are running into, and we have run into this in a lot of these surplus withdrawals, is that while the plan text says something--the plan text might have been made 10 years ago--at some point in time you will find that some individual in the company had given some understanding to the people and there might be a letter somewhere. We take those into consideration. We monitor these things exceedingly closely.

Mr. Black: Let me pursue that with you for a minute. It is often said, for example, the government of the day has taken advantage of the publicly funded superannuation plans to find an economical source of funds.

Mr. Kruger: Right.

Mr. Black: Is that a valid criticism? If it is, what did the commission do at the time to sound the warning?

Mr. Kruger: First of all, in the regulations that existed heretofore, those two plans did conform with the regulations. There is some difficulty whether or not they conform to the prudence test today, but you will find if you look through our regulations that they are excluded from that test. They are excluded on the basis that we knew Coward was coming down and also Rowan was coming down. Now the government is going to make a decision on that.

Rowan points out that, even on the basis of a test of prudence, the yield that has come from the government bonds, although it is a controlled thing, has performed pretty well in accordance with market indices. He is not saying it could not have performed better, but he is saying it has performed pretty well, and he makes the case that perhaps it would indeed meet the prudence test. We are a little concerned about whether or not it would, and we have told the government that.

They are excluded until such time as the government makes a decision on those two plans. That is another part they have to look at, because it is a major thrust of the Rowan report that these plans should now be released and float free into the market; they should be able to get market rates. The teachers, as I say, are looking at that. If they do that, that will increase the amount of the performance of the fund. That is what they are obviously looking to.



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This, of course, has a considerable impact on government, and it will have quite an impact on the money markets here. It could also have a positive effect on government. They have to look to this, because now they will be able to get short-term money and play the market. That is a little bit better than locking the money up, as it was, in long-term bonds. So this is what the Treasury and government are now analysing.

Mr. Runciman: I wanted to say I was pleased to hear Mr. Kruger's comments about his concerns--let us put it that way--with regard to increased assessments and premiums regarding the guaranteed fund.

You talked about funding on a solvency basis and the concerns of some of the auto manufacturers. What would that mean to someone like a General Motors? What would that mean financially?

Mr. Kruger: General Motors has not actually given us a figure of what it means, but it could be an additional \$100 million that the company would have to put into the plan. That is what it could mean.

Mr. Runciman: I know you have mentioned the concerns being expressed about Bill 170, Friedland and seeing funding on a solvency basis and so on. It is not encouraging a lot of people to get into pension funds. What are you doing or what would you like to see done to encourage more employers to get involved in private pension funds?

Mr. Kruger: One of the great problems that you have is the social pressure that is out there. The argument is being made and was made in the Legislature on the mandating of pension plans, of inflation protection. If there is one single factor that the market is looking at, that is it. What will the government's position be on that?

Mr. Runciman: On Friedland, you mean?

Mr. Kruger: Yes, on Friedland. Until such time as that comes down, there is a wait-and-see attitude because that is the thing that will have impact.

When you look at Friedland, you see that the percentage of payroll would jump if all of the plans went completely retroactive. That is why Friedland did not recommend retroactivity. That is why he said it should be prospective. They did actual plans and some of them jump up by as much as 18 per cent or 19 per cent of payroll; even more than that. It depends, again, on the type of plan. If you have the final average plan, there is already a part of inflation protection built into that. If, on the other hand, you have a career average plan, there is not.

What are we doing to encourage? We are just waiting to see what the government in fact does decide on Friedland. Most of the encouragement of it really is not in our hands. It is in the hands of the advisers to business and actuaries. As the superintendent has rightly pointed out, as some of the rules on registered retirement savings plans change you have a greater flexibility in that the smaller company is attracted to the RRSP. So we are just going to have to wait and see. You have very aggressive market forces. You have all the insurance companies, the life companies, that are out there promoting group RRSPs.

Mr. Runciman: What is the general feedback you are getting?

Mr. Kruger: The general feedback is that, of the smaller companies we are still registering, they are still, in the majority, defined benefit plans. We have no way of knowing what is going on in the RRSP market really.

Mr. Runciman: I did not mean it in that sense. I meant in response or reaction to Friedland's recommendations, what feedback you are getting.

Mr. Kruger: It all depends to whom one talks. I think if you talk to some of the pensioners that we have spoken to--and we get many calls from the person who is in a pension--they have the very valid social argument that their pension is just decreasing as inflation has gone up. Some of them find that, because they are living longer, there should be retroactivity and they should be covered. If you talk to the businesses and the business community generally, they say they just cannot afford it. Yet there is a dichotomy in that. One of the loudest voices saying they could not afford it was that of the automotive companies; yet they get into collective bargaining and they give it.

Mr. Runciman: They did not give retroactivity, though, did they? I do not believe so.

Mr. Kruger: They gave a sum of money that would go for those people who are retired, and retroactivity would apply. Anybody who is retiring tomorrow would be assured of this, and they have a scale on it.

So there is a dichotomy. There are other voices in business that say: "No, there is just no way. If they bring in retroactivity, we are going to get out of the business." Yet there are others, and we have had a few of them, who have said: "That is really unreasonable, because we have had a plan and we have given ad hoc increases over a period of time. What this is going to do is merely to mandate that those ad hoc increases would have to come. If you give us a formula that you cap it, you have got to cap it; and if you make it as a percentage of whatever that cap is, maybe it is not so bad." You talk to the unions and there is absolutely no question there should be retroactivity.

Mr. Runciman: It is a pretty dangerous game, really, in respect to your making an assumption, based on what happened with the Canadian Auto Workers, that you can proceed as a government, calling their bluff, if you will, and it has some pretty significant implications for the Ontario economy.

Mr. Kruger: It has some significant implications. There are other things you should know, and we have raised these as questions more than anything. There are actuarial equivalents. I do not want to get into the detail of this, but let me just give you one example. If you have a final average plan, which is two times the number of years and so forth, if you went to the 75 per cent minus one, which is the formula suggested by Friedland, the actuarial equivalent of that, to give you protection, would be about 1.5. So instead of two times, you could have around 1.5 and you would still be entitled under that formula to get inflation protection. So one of the things that is out there is equivalence like that.

That does not put any further cost on industry, but it does put a decision on the basis of the individual. Then you run up against the question, would an individual who is entitled to two times that prefer 1.5 for as long as he lives? There are choices to be made, and that is the difficulty of the



probing and the research we are trying to do as best we are able. A lot of it is judgemental. All we can do as a commission is suggest that there might be alternatives for the government. The government will decide.

Mr. Runciman: You are not going to make recommendations to the government.

Mr. Kruger: Oh, we will make recommendations to the government, but it will be along the lines of: "The Legislature said there is going to be inflation protection. Government, you have performed this through Mr. Friedland. All right? You have done that. We have some suggestions you might want to look at if you are going to get into retroactivity, and you might want to consider, blah, blah, blah." That is what we will do.

Mr. Runciman: When are you going to do that?

Mr. Kruger: We have a commission meeting coming up on the 18th. We are going to be making up terms of reference and we will be having some discussions. I could not tell you.

Mr. Runciman: The minister has not requested a recommendation from you by a specific date?

Mr. Kruger: The minister is well aware, as we are well aware, of section 97 of the act, where we are obliged to bring forward advice to the government. We are very well aware of our duty and we intend to carry that out.

Mr. Runciman: When do you foresee the government making a final decision?

Mr. Kruger: I really have no idea of their timetable. Dr. Slater is not due to report--I think it is in July some time--and I would imagine they might want to wait before they act on Friedland until he gets his report in, or they might want to act independently. I believe the Treasurer (Mr. R. F. Nixon) at one time said he would like to have it before the House prorogues for the summer.

Mr. Runciman: Have you given any thought to the idea of indexation applying only to non-negotiated settlements, where collective bargaining is not in place? Obviously, we have seen it occur in the Canadian Auto Workers, Air Canada and so on, where collective bargaining processes are there. Should the government be intruding into this area? Perhaps it should confine itself with respect to indexation to those companies that are not covered by collective agreements.

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Mr. Kruger: There might be an argument there that when you mandate something in the act, as specific as this act is, you are not giving a level playing field. If you are an employee in a non-negotiated industry, where you do not have a union, why should you be treated any differently from a person who goes to collective bargaining? It becomes a question of social value. It becomes a question of social equality. I think that is one thing that you would want to consider.

I am not saying it is even before the commission yet. You might want to consider that maybe certain people who get a very large pension can look after themselves. Maybe there is a certain level of pension that should be mandated.

There is a whole group of ideas that we are tossing around. We have a very active commission. It is a very balanced commission. We have labour on it. We have management and so forth.

Ms. Gordon: What is the "so forth"?

Mr. Kruger: And we have Lynne Gordon, who continually reminds me of the consumers' point of view. She is coming up with all types of ideas that we ought to consider.

We will do our best to give the government our thoughts. At least we will get something into the hopper.

Mr. Runciman: I would like to hear your thoughts on the idea of pension legislation, and I guess indexation too, being construed by some as ultra vires. In effect, what you are saying is, if you have a firm that is operating in a variety of provinces in Canada, this legislation applies. You have many instances of employees travelling from one province to another on a relatively frequent basis. How do you deal with that sort of situation? Say someone who has 20 years' employment in Ontario and 20 years in British Columbia retires in Ontario. What are you going to say? How do you deal with that?

Mr. Kruger: That is on two fronts. First, we have reciprocal agreements with the other provinces.

Mr. Runciman: Not in terms of indexation.

Mr. Kruger: No, not in terms of indexation. If you are asking what it is on indexation, the answer comes down to the second point. We are there to protect Ontario employees for whatever service was in Ontario. As a matter of fact, that is a point of our discussion that is coming up at the Canadian Association of Pension Supervisory Authorities meeting which is later on this month. That has been the whole of our thrust, not only indexation but the question of surplus, because some provinces permit surplus withdrawals.

The superintendent has a very involved case right now between Quebec and ourselves, and we are taking very active steps to ensure that the Ontario members are protected on the surplus in that plan.

Again, when the commission does it, we do not look only to the active members; we look to all of the retirees and anyone who might have a claim against it. We protect it that way, and that is our concern. We also apply the rules of our act to the Ontario employees.

Mr. Hawkes might want to add to it on the reciprocal agreements.

Mr. Hawkes: The issue of reciprocal agreement, of course, has come up for review as a result of pension reform going forward in the federal jurisdiction, as well as some of the other jurisdictions. There are certain parts of the reciprocal agreements--and Ontario is somewhat different from the other provinces--in that the act allows the Lieutenant Government in Council to delegate to another pension supervisory authority the right to enforce our act.

It goes even further. In fact, you could abrogate rights under our act. If it is being monitored by another jurisdiction, you could give up certain



rights, for example, the surplus rights or the right to inflation protection. I do not think we would go that far, but that is built into section 96 of the act.

Mr. Runciman: I am still uncertain how you would deal with an individual in the example I gave if indexation comes and it is currently not the same.

Mr. Hawkes: First of all, it is a question of, I guess, is it or is it not going to be retroactive? Essentially, the way we have tried to deal with this, and it creates many problems, is to use what is called a final location rule. In other words, where does he end up--the laws of the province where he lives or the laws that apply at the time of his termination?

Mr. Runciman: So indexation, you are suggesting, would be based on all of the service of that individual. Whether he was 20 years in British Columbia and 20 in Ontario, it is his final destination, if you will.

Mr. Hawkes: Indexation could be a problem in applying that kind of scenario. In order to simplify what law applies, the best and the simplest approach is to say, "Wherever you terminated your contract, the rights are those rights that you have in that province." When you leave the province, there is a very real question that your rights disappear with you, because you have now located in and you are entitled to the rights of another province.

You must remember the rights under our act apply only when you leave. You could commute your value when you left Ontario, theoretically, and take it under a new plan, but in terms of trying to administer national companies, the various provinces have agreed that they will take the leadership where the majority of the employees are registered. If Ontario has a majority of the employees, it will be the governing body. If it is Alberta, Alberta will do it.

That was one of the reasons for pension reform trying to arrive at a consensus. We did not get there and there are some problems. It is going to arise even more, and this is another area we are looking at. If you have somebody who has worked in four provinces with four different registered retirement savings plans, it is going to create further problems. We are trying to arrive at a common vehicle so that he does not have different rights under four different sets of rules in his RRSP, but these are technical areas that can be a real nuisance to individuals and to the issuing institutions, such as the banks or the trust companies.

Mr. Kruger: There is another aspect to it too. We are trying to get away from the checkerboard approach, technically, yet we will get individual cases where, even with the rules we lay down, an individual does not kind of fit in the rules for various things.

In the past, historically, and it has worked this way, the superintendents were in touch with one another on a pretty regular basis and generally were able to accommodate one another in these cases. Somehow or other, despite all of the difficulties to this point, we have made it work, and it is the purpose of meetings such as we are having this month to ensure that type of good co-operation continues. I must say that within that body it exists. Eighty per cent of our act is consensus, but it is that 20 per cent that does cause the problems.

You are quite right. Depending upon the formula of inflation protection, depending on whether it is retroactivity and so on, then we are going to have to take a look at those rules.

Mr. Runciman: I gather you are heading off to the quasi-socialist auto insurance program in the near future.

Mr. Kruger: I would say I am doing this job and I will continue on. I do not really think it is quasi-socialist. I think they call it the Ontario Automobile Insurance Board. I am on board there right now. I am the chairman. Do you want some questions on that? I would be glad to answer them.

Mr. Runciman: How is that going to impact on your service in the pension commission? You are leaving the pension commission?

Mr. Kruger: No. This is what is occurring there. I am the oldest employee at the senior level.

Mr. Hawkes: Do not say that; say "longest serving."

Mr. Kruger: The longest serving, yes. "Oldest" is wrong. I am really very young.

What I am waiting for is the conclusions on Friedland, the conclusions on Coward and the other to make sure, because I saw these regulations come through. When that is done, and the government is already on notice I intend to leave, I will phase down.

There is one person we did not introduce today because we do not have that person yet, and that is the director of pension plans. That is the whole of the program area. As soon as that person is employed, and we have just had ads going out, that will relieve some of the pressure on Mr. Hawkes. As soon as that is relieved--I am working now at about 40 to 45 per cent pension commission and the remainder on the Ontario Automobile Insurance Board. That will phase down to 10-15 per cent as soon as we can get the other.

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Mr. Runciman: My concern about the fact that we have so many important changes taking place in respect to pensions is continuity.

Mr. Kruger: I have to stay here until it is done.

Ms. Gordon: That is my concern.

Mr. Kruger: My vice-chairman might have something to add.

Ms. Gordon: Yes. I am glad you brought it up because it is a very real concern to me. I came on board only right after the Dominion Securities Pitfield affair, and so did John Kruger. I think what is good is the balance of the commission because so often when you have a commission that has to do with supposed experts, there is not a feeling of what is going on in the pulse of the people or what is happening out in the social area. It is important to say that what he has done is really broaden the profile of a pension commission in an area where it had been sadly lacking for years and in a rut. I am very worried about his leaving and I hope we can persuade him to stay.

Mr. Kruger: Thank you, and I did not even ask you to say that.



Ms. Gordon: No one asked me.

Mr. Runciman: In terms of the auto insurance program, you may be able to get someone like Mel Swart to fill in for you.

Mr. Kruger: As a matter of fact, in that regard, everything we are going to do is going to be in public. One of the first things we are going to do is send out, on consultation for a process, to Mr. Swart. I certainly want to sit down with him and I look forward to his appearing before the commission.

Mr. Runciman: On a regular basis?

Mr. Kruger: On a regular basis, to make his point. We are certainly more quasi-judicial than here. One must put forward evidence, and it is on the empirical basis of that evidence and the facts presented that the board will make its decision. I look forward to it.

Mr. Runciman: He may not show up in that case.

Mr. Chairman: I have a couple of short questions I would like a couple of short answers to with regard to the pension commission. On a scale of one to 10 across Canada, where is Ontario in that scale?

Mr. Kruger: We are the leaders. Some 65 per cent of all pension plans are covered by Ontario. Every time we go to the meetings, we are obviously the leaders. The other provinces look to us to see what we are doing. We even have the federal government waiting to see what will occur with Friedland. They are kind of holding back on that. So we are the leaders. On a scale of one to 10--6.5.

Mr. Chairman: Great. The other question I have is, if there were some changes or some input that you would like to see made with regard to the pension commission, what is there concerning you now that you would like to see better?

Mr. Kruger: Let me ask you, sir. With regard to input, I think we get plenty of input. It all depends. Do you mean from that more dialogue with us by other--

Mr. Chairman: I am just wondering how we can improve it. What area are you zeroing in on to help improve the pension commission so that it can better serve the people of Ontario?

Mr. Kruger: Obviously, there are two major areas which we have not really tapped. I think Ms. Gordon mentioned one of them, and that is the whole of the public dialogue. You should know we have had outside consultants come in. They say we should spend immediately \$200,000, and that is in our budget. We have to tell the pension story. There are a lot of improvements in the bill. We intend to do that. The other thing which has been sadly neglected, and which was in the previous bill but was never done by the commission, is fundamental research.

We have to be living in the 21st century because we have to know what is going to be the impact of demographics generally, not only for the impact of that on the funding of the plans and how these plan managers do it, but also what changes should we be making in regulations, what changes should we be making to our act, because it took 10 years to get pension reform. I have been making speeches around and I am saying the only thing that is constant now in pensions is change.

Ms. Gordon: Just briefly, I want to emphasize, yes, 10 years, because when I was chair of the Ontario Status of Women Council, we brought in a very comprehensive pension plan. I am happy to see, and this is an area I hope is not forgotten, what it also means to women in terms of affordability, vesting, the spousal part and part-time workers. Those were very important things and I hope, with these other very hot issues, it all impacts on this too. That just happened.

Mr. Chairman: Perhaps I could ask you a further question. How would you improve on Bill 170? Do you feel there are some areas in that bill that could be improved on?

Ms. Gordon: I guess I would be very concerned. I think of people, since my area in so many years has been consumers and then women. I care a lot about how they will work out the portability so it makes sense to the person who does not know that much, how they can carry it and what they can do. I would be very interested in the inflation indexing. Also, what concerns me--I am glad that Mr. Kruger said the "wait-and-see attitude"--is when the arguments come up that turn people off. We forget that there is a marketplace out there. There is more social awareness now, and there is the whole area of competition that we have to worry about. It does not happen that easily.

Besides the negotiating that goes on with the union, the part-time worker is a tremendous issue. When I was chairperson of the status of women council, I was glad to see that, because for a long time they were ignored. I remember even when I was in the chair that the doctors had a big problem with that, because there were women in the field who were told: "Go home. You are taking the places of full-time doctors if you are not going to work full time."

These are issues. In other areas, the surplus was very important to me when I came in. I guess it is also a matter of monitoring and watching and making sure.

Mr. Kruger: There is another fact that your committee might be interested in, and that is that pension plans are having, in their investments, enormous clout. We regulate a minimum, in the private sector plans, of \$55 billion and in the public sector plans, over \$38 billion.

The trustee plans in Canada, in the second quarter of 1987, stand at \$135 billion. As these plans go and as they are invested, not only for the protection of the people in the plans, it is also, in the broader sense, this country and this province. It is rather interesting that down in the United States, in Manhattan, if the fund manager for the pension plan there coughs, there are a lot of companies that sneeze. Because even under our new regulations, which in some way are similar to the Employee Retirement Income Security Act concept of the prudent person approach, a pension plan can actually control the company provided it is done prudently.

If we had these rules when the Canadian Tire thing broke, I will tell you it might have had a different result.

Ms. Gordon: And also, I think it is important to realize how much we have worked on the language of sex discrimination to bring it in line with the charter. We have been very aware of that. That is really because the pension commission now--not a long time ago, a year ago or so--has the balance, and I think that is something that every commission or council should be looking at, the kind of balance so that vested interests are not just so polarized.



Mr. Kruger: Let me tell you something that drives the actuaries up the wall and drives us a little bit up the wall, the unisex tables. It is a great concept, but the fact of the matter is, women live longer than men. I hate to say it, but that is the reality. Yet, in a unisex table all things are equal. To go to some of these tables to make sure that there is no discrimination is causing a few people to tear their hair out. But it is a reality we have to face.

Mr. Chairman: I think we will be able to wind up this review by noon. What I am really looking for from you is we have to do a report, and I am asking these questions so that I can try to get something from you as to how you feel it can be made better, and if you can help us.

Mr. Hawkes: Can I make a couple of points, Mr. Chairman? I think, first of all, as legislators you should be aware that, like any new legislation, there are problems in this bill.

We are identifying them. We will be back. This is a problem for many people out there today. What does this act mean in many respects? Ms. Gordon spoke about part-timers. We have some problems and I have to interpret some of these things. This is just simply to put you on notice that there are problems in the act and it is typical of any new act.

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One of the significant issues that neither of my colleagues has mentioned is the family law aspect. If you think in terms of the family assets in the split of a marriage, the house and then the pension are probably the two largest assets. While there has been some direction given in this bill, there are still a lot of unanswered questions. The family law practitioners and the bench are now raising certain issues. That is another outflow from this, given the impact of pensions and pension assets within the marriage.

Those are some of the other areas, aside from all the funding issues.

Mr. Kruger: I know what you are asking, Mr. Chairman, and I understand what you must do. I have a suggestion, therefore. I think you could bring in a recommendation that the Pension Commission of Ontario should, as soon as possible, based upon the experience it has now had in the application of the act and the regulations of the act, make those recommendations to government in order to ensure that some of the ambiguities which have now been found in the act and in the regulations are cleared up. I do not mind seeing tough words on that, because that would help us.

Mr. Chairman: Would you be prepared to put some of those recommendations to us?

Mr. Kruger: Yes, absolutely no problem. If you want some more, we will get together with the staff group and we will give you a battery of them.

Mr. Chairman: Great. I want to thank you for appearing before us. It was a very enlightening and educational morning.

Mr. Kruger: Do you want us this afternoon?

Mr. Chairman: I do not think it is necessary.

Mr. Kruger: Goodness me, I am a little disappointed. I put this day aside to relax. Now I have to do some work.

Mr. Chairman: Sorry to disappoint you.

Mr. Kruger: Back to the telephones, back to Massey.

Mr. Chairman: Thank you very much.

Mr. Kruger: It has been a pleasure appearing before you. I did like the questions. They were quite intelligent.

Mr. Chairman: Coming from members of the Legislature.

If the committee would just stay here, we may have a few minutes to review some matters.

Mr. Kruger: We will forward some possible recommendations to you.

The committee continued in camera at 11:55 a.m.



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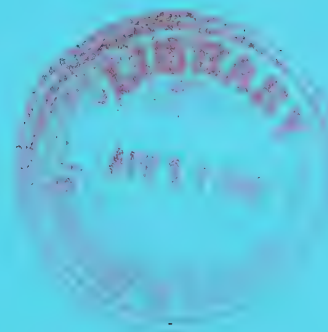
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

CIVIL SERVICE COMMISSION

MONDAY, MARCH 28, 1988



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh

Clerk: Arnott, Douglas

Witnesses:

From the Civil Service Commission:

Raymond, Gérard J. M., Chairman

Daniels, Arthur F., Commissioner; Assistant Deputy Minister, Registration  
Division, Ministry of Consumer and Commercial Relations

Mancino, Shirley, Director of Research

Doppelt, Allen, Solicitor

Bedborough, Cynthia, Executive Officer/Secretary to the Commission



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday, March 28, 1988

The committee met at 10:10 a.m. in room 228.

AGENCY REVIEW:  
CIVIL SERVICE COMMISSION

Mr. Chairman: I see a quorum in order to start our hearings.

We have today Mr. Gerard Raymond who is the Chairman of the Civil Service Commission and perhaps, for the record, you could indicate to us who is with you. And I would also presume that you would have an opening statement.

Mr. Raymond: Thank you, Mr. Chairman.

Yes, indeed, I do have a very brief opening statement and, at the outset, I would like to introduce myself and my colleagues.

As you have indicated, I am Gerard Raymond, Chairman of the Civil Service Commission. To my right is Art Daniels who is a member of the Commission. He used to be an Assistant Deputy Minister of the Indian Resources Secretariat, and is now an Assistant Deputy Minister of the Ministry of Consumer and Commercial Relations.

To my far left is Shirley Mancino who is Director of Research with the Civil Service Commission and Allan Doppelt who is on the Attorney General's staff who was quite instrumental in examining the various options that we are now considering for the PSA and Allan just left us and is now an Assistant Director with the Ministry of Consumer and Commercial Relations.

But to further elaborate on the current role and responsibilities of the Commission, I would like to briefly review its history which may provide a context for discussion of our current role and future mandate.

The first Act providing for the essential administration of the Public Service was the Public Service Act of 1878. It was administered by the Prime Minister's Office as it was then known.

In 1918, the office of the Civil Service Commissioner was created. The Commissioner was generally charged with the responsibility to investigate and to report to the government on various personnel matters and was required to certify the necessity of the fairness of salaries attached

to any new appointments to public service.

The Prime Minister's Office continued to be responsible for the administration of the Public Service Act through the office of a single commissioner until 1942. In that year, the administration of the Act was moved to the Department of the Provincial Secretary and, in 1947, provision was made for the appointment of three commissioners including a Chairman. The appointment of the two additional commissioners did not take place until 1957.

In the early 60s, the commission's supporting arm was made a separate department of government, thus there were two interlocking units: The Civil Service Commission and the Department of the Civil Service.

These organizations continued until about 1972 when the name returned to the Civil Service Commission. The Chairman of the Commission acted as deputy minister for the staff of the Department of Civil Service.

For a brief jog between 1969 and 1972 there were both a chairman of the Civil Service Commission and a deputy minister who was attached to the Civil Service.

Since 1974, the Commission's activities have been overseen by the Chairman of Management Board and the budget of the Commission appears as part of the overall budget of the Management Board. In fact, the Commission is currently listed as a Schedule 1 agency of Management Board.

In 1984 the government commissioned a study in the Government of Ontario and in January of 1985 the report was issued which recommended that Management Board of Cabinet delegate more of its powers to deputy ministers and that deputy ministers be made more accountable for the management of their ministries.

In September of '85, the Chairman of Management Board commissioned a review of current activities in human resource management. The review was conducted by W. P. Moore, Vice-president, executive development and organization from Imperial Oil Limited and his report commonly is known as the Moore Report entitled: "Managing Human Resources in the Ontario Public Service", was presented to the government in March of 1986.

Five principles of re-organization were outlined by Moore. They were:

(1) That the government must direct a management of its employees and the terms and conditions of their employment.

(2) The government must ensure that the merit principles are applied consistently and effectively.



(3) Deputy ministers and senior managers must take the lead in developing human resource strategies and policies and practices.

(4) The Civil Service Commission must be separate and distinct from the staff group responsible for policy development and co-ordination.

(5) The Secretary of Cabinet bears a responsibility to the Premier to support the Premier in the corporate management of deputy ministers and senior managers at Levels 4 and 5 of the Executive Compensation Plan.

The responsibilities of the Civil Service Commission, as recommended by Moore, were as follows:

The Commission will ensure responsible administration of the Public Service. In particular, will monitor and report on the performance of the government as an employer and retain responsibility for the merit principle.

The Commission will delegate the deputy ministers to the extent possible under the Public Service Act, its policy, administrative and human resource management responsibilities.

In March of 1986, the government basically adopted the Moore Report and immediately set up the Human Resources Secretariat reporting to the Chairman of Management Board. The new secretariat was staffed by absorbing the staff of the Commission under a deputy minister. Its mandate was to provide leadership in policy development and strategic planning related to human resources.

A number of other significant organizational changes were made in keeping with the Moore Report. An external advisory council on executive resources was appointed. It advises the Premier on compensation policies for deputy ministers and chief executives and their agencies, boards and commissions, and reviews succession planning for senior executives.

The executive development committee - the committee of senior deputy ministers - was created. It was given responsibility for matters related to the appointment, the development, compensation, classification, organization of senior executives.

The new associate secretary of Cabinet for executive resources was appointed to provide administrative support to the secretary of Cabinet and the executive development committee and the advisory council and to assist in matters related to succession planning and the development of senior executives.

All of the above changes were made without any amendments to the Public Service Act. The transfer of duties and responsibilities from the Commission to the secretariat was carried out to the extent that such transfer of power and duties were permitted under the existing Public Service Act.

Donald Crosbie was appointed as the new Chairman of the Commission. In October, '87 Mr. Crosbie was assigned as Deputy Minister of Energy and I was appointed as his Chairman of the Civil Service Commission.

Substantially all of the administrative and policy functions of the Commission have been transferred to the secretariat, but there still remains the core body of functions which involve the Commission in the making of regulations or in educating issues. The Commission has continued to function as a tribunal.

In addition to the chairman, the Commission -- the composition of the Commission is as follows: John Sloan, Secretary of Management Board of Cabinet is a member of the Commission; as is Valerie Gibbons, Deputy Minister of Consumer and Commercial Relations; Art Daniels, as I have indicated, and Cynthia Bedborough is a secretary of the Commission and Cynthia is sitting at the back.

You have, I believe, received a copy of the Memorandum of Agreement between the Management Board of Cabinet, the executive development committee, the human resources secretariat and the Civil Service Commission.

Pursuant to the intent of the Moore Report, this agreement, in effect, delegates to the secretariat the powers, the duties and the functions of the Commission except those that, in law, must be carried out by the Commission.

The agreement provides that the role of the executive development committee shall receive the executive appointment process for senior executives.

The basic duties of the Commission as set out in an Act are currently those that one might normally expect to be required to establish a public service and to regulate the human resources management of the service.

Thus, the Commission is required to evaluate and classify each position in the service, to recommend to the Lieutenant Governor-in-Council the salary range for each classification, except where it is determined by collective bargaining, to recruit qualified persons and to assign persons to positions in the classified service at a specified salary.



Subject to the approval of the Lieutenant Governor-in-Council, the Commission has the power to make regulations dealing with a wide range of human resource management issues, such as classification standards and procedures for recruitment, selection and nomination, probationary period, employee enefits, hours of work, regulating the conduct of public servants, leaves of absence, lay-off and recall provisions, and a number of other matters. While the responsibility for policy development has been delegated to the human resources secretariat, the Commission must approve and pass the regulation.

It should be noted that most of the rules governing the bargaining unit are made pursuant to the Crown Employees Collective Bargaining Act. Any provision of the collective agreement that is inconsistent with a regulation made by the Commission overrides the regulation, but the collective agreement cannot override the statutory provisions of the Public Service Act.

In addition to those initiatives and activities for which the Commission is directly responsible, the human resources secretariat also responded to the Moore Report's recommendations by implementing a series of human resource management activities. A significant one Planning for People Initiative, includes strategies for new executive pay-for-performance, employment equity, performance appraisal, pay equity, succession planning and the voluntary exit program.

In addition to its functions under the Public Service Act, the Commission has been involved in two major tasks. The first is the rewriting of the Public Service Act to reflect a re-organization contemplated in the Moore Report and also to bring it up the date. The last rewrite of the Act was in the early 1960s.

Over the last few months, extensive consultations have taken place and draft proposals for a new Public Service Act have been and are being developed. Extensive research was carried out to examine a number of alternative organizational structures that might be considered. The focus of this research is to develop proposals that would provide clarity, avoid duplication, and achieve greater accountability, efficiency and effectiveness.

The second major undertaking is the development of corporate values and ethics initiatives. The purpose of this major program is to develop throughout the Ontario Public Service a sensitivity and commitment to ethics consistent with corporate values. The public, private and academic sectors were canvassed to determine the best ways of identifying and promoting these values.

The Commission's goal is to foster the general acceptance of the ethical norms as part of the corporate culture of the Ontario Public Service rather than as a narrow code of conduct or totalitarian standards.

Our initial proposals in this regard have been tested with several groups of deputy ministers and executive directors. Further modifications of our material will be made prior to wide-spread implementation. This work has basically been carried out by Shirley Mancino.

The Commission continues also to play a lead role in several other areas. In consultation with the secretariat; that is, the Human Resources Secretariat and the office of the associate secretary of Cabinet for executive resources, the Commission is reviewing with the assistance of the consultants the executive pay-for-performance system. A number of other initiatives ranging from secondary employment to conflict of interest guidelines are currently being developed.

The Chairman and the Commission members also act as the Chairman and members of the Board of the Government of Ontario Employees Charity Trust. The Trust is responsible for overseeing the collection of funds for charitable purposes in the Ontario government. The two charity draws are the Federated Health campaign in the spring of each year, and the United Way campaign in the fall of each year.

The last United Way campaign in the fall of '87 raised in excess of \$1.6-million. The last Federated Health campaign in the spring of 1987 raised in excess of \$600,000.

The Board: Basically the members of the Civil Service Commission has initiated several actions in relation to the Charity Trust, these include a review of the roles and responsibilities of the Trust, the campaign committees and the Federated Health Selection Committee.

Mr. Chairman, I think I will complete my opening statement at this point and my colleagues and I would be pleased to answer questions from you or members of the Committee.

Mr. Chairman: Thank you very much.

Any members' questions?

Mr. Black: I am intrigued by Personal Property Securities Registration Branch. Whose personal property? What is that about?

Mr. Raymond: He is the assistant branch director.

Mr. Doppelt: Our branch administers the Personal



Property Securities Act which is a computer -- well, we have a computerized registration system to record notices of security agreements such as chattel mortgages, corporate bonds and debentures.

Mr. Black: Oh, I see.

Mr. Doppelt: Other loan agreements relating to personal properties such as goods and so on.

Mr. Black: But are they registered like on a county basis or...?

Mr. Doppelt: No, it is a province-wide registration system and it is all computerized. We have 49 branch offices, but basically it is all recorded in the central computer and searches are done from any one of those locations.

Mr. Black: I remember there used to be a problem, you know, when you bought things secondhand trying to find out if there was a lien against it.

Like, you could search in the local county Registry Office, but if the loan had been taken out in another county you were kind of beat.

So does your system get around that now then, pretty well anywhere in Ontario, you can quickly determine if there is a lien--

Mr. Doppelt: Mm-hmm.

Mr. South: --against something you want to buy?

Mr. Doppelt: You can come to the local Land Registry Office, do a telephone search the same day or you can get a computer printout the next day showing all security interests registered against a particular debtor's name or a motor vehicle serial number.

Mr. South: I see.

Mr. Chairman: They are hoping that in future, particularly buyers of secondhand cars, can check and see that the automobile they are buying is clear.

Mr. South: I see.

Mr. Doppelt: Yes. We will deal with a million and a half -- up to, I guess, a million and a half registrations a year. We are very busy right now.

Mr. South: Yes. I thought it was something internal, like, you looked after each other's jewellery or

something...

Mr. Raymond: That would not be a full-time assignment, I can assure you.

Mr. Chairman: Mr. Black?

Mr. Black: I would be interested in having more information on the performance appraisal program that operates within the Civil Service. Can you give me some more details on that?

Mr. Raymond: Yes. As a result of the Moore Report more emphasis was being placed on pay-for-performance at the most senior levels or echelons of the Executive Compensation Plan; that is, assistant deputy ministers and executive directors.

But Mr. Daniels, who was the assistant deputy minister in charge of the program when it was being implemented, I am sure, would want to complement this.

Mr. Daniels: One of the things that Mr. Moore, his report recommended, and also going back to the accountability study that Canada Consultant put out, indicated that we had an appraisal system in the Ontario government that just wasn't working as well as it could because most people were at the maximum of their salary.

In fact, at the executive level 80 per cent of the people were at the top of their ranges and each year they would get an automatic increase based on inflation, or whatever, so it could be three per cent or five per cent or four per cent and everybody got it whether they were an extremely competent executive or a competent executive and, in some cases, an incompetent executive, getting the automatic four per cent.

What we did in 1986 was looked at the recommendations of the Moore Report, but we also went out to see what other major corporations and large corporations were doing in the area of pay-for-performance. It made a lot of sense that you get paid for how you do your job, not the fact that you are just in the job itself, but how you perform it.

We went out to -- particularly to some of the larger banks: The Toronto-Dominion Bank, the Bank of Nova Scotia, to the IBM Corporation and looked at their pay systems and their incentives positions.

Again, you have a bit of a difference there too. They have bonus systems and sort of profit sharing and, again, we couldn't get a parallel there. But we did get a parallel in a couple of other provinces and we did get a parallel at IBM which was not into a bonus system but more



of an exact pay-for-performance.

So right now a government -- a senior government official - and this encourages good appraisals because you have to explain to somebody why they are not getting any increase at all. At the same time, you also have to explain to somebody why they may be getting above what everybody else is getting and other executives want to know why somebody is performing better.

How it is controlled is two ways: You design a pay grid - and I don't want to get too technical - but you design a grade that says the average payout will be 4 1/2 per cent. That means some people would get zero and other people at the high end - if you distribute that 4 1/2 per cent - would get about -- could get up to 10 or 12 per cent.

What we also did was established a true line, a controlled trend. In other words, there had to be five per cent of executives - and this we borrowed pretty heavily from IBM. Five per cent of executives have to be unsatisfactory, have to go out and find and make sure that there is a fair distribution and that not everybody is super excellent. And another five per cent can be exceptional or excellent; meaning that the bulk of employees will be in the middle of the grid.

In 1986-87, the first year - just to give you an example of how well it went - only 36 executives out of about 700 were rated as exceptional, about 20 per cent were rated as superior - that is between fully competent - and then about 40 per cent were rated as fully competent.

So we got an exact distribution on the amount of money and we got a distribution curve. Again, we got about 30 people who were unsatisfactory who, in that year, were unsatisfactory, were demoted or were removed from their jobs.

So we did get a more healthy atmosphere for people, found out how they were performing. In the old system you could take the easy way out and not confront anybody because you knew that there was no day of reckoning, the person would get the four per cent.

I used to make the illusion when I was doing the training on this - I think some of us face this with senior management executives any time - you can put the person into coventry if you pretty well ignore them at end of the hall because you know that they are just going to carry on and they are going to get their pay and there is no necessity of going down and saying: I am going to give you zero.

You couldn't ignore that person at the end of the hall, you had to go down and say: I am not giving you any money

this year, you are not getting inflation, you are not getting any merit pay, you are standing still. Through the means of that message system, the person gets the message that they are not performing.

So we have really -- we are into the second year now and I think it was the right way to go. It makes us a more accountable public service and we are planning to take that model and move it down into the managerial ranks. It is more difficult to put into the bargaining unit, as you can guess, though collective bargaining pay-for-performance may prove more difficult, but there are some examples of it in the private sector too, but we will bring it in on a top-down approach.

Mr. Black: I wonder perhaps if I could pursue a number of avenues there. I am not only interested in the compensation package that rewards excellence or doesn't reward excellence, I am interested in the performance appraisal of people who work within the Civil Service without regard to compensation.

Mr. Daniels: Okay.

Mr. Black: Do you have or do we have in this province a province-wide formal performance appraisal system?

Mr. Daniels: Within the policy of the manuals of administration, it is a mandatory performance appraisal system which each ministry must have and every employee is entitled to a performance appraisal and at the executive level it is based on pay-for-performance, at the other levels it is mandatory requirement that you have to know what your duties are, what is expected of you, and how you are performing up to those expectations.

Each ministry has developed some unique performance appraisal systems based on the type of ministry. I have worked in five ministries and I have seen different ones and I have actually implemented different ones.

My first Ministry in corrections, you tend to develop a skill-based appraisal system that sort of says how the person does in term of correctional skills: Supervision of inmates, probationaries, how you deal with the public, sort of in that area of skills.

When you get into a professional ministry like a COMSOC, or something, you may be looking at output measurements in terms of the number of cases heard, the number of -- in terms of welfare clients visited, you get some different measurements there. And in a professional ministry like a secretariat - where I also worked - again you are dealing more in and outputs measurement.



So each ministry comes up with its own appraisal system that fits its needs. If you are skill-based ministry or you are a professional ministry or a results oriented ministry, if you are a transfer payment ministry it is how you manage funds back and forth, like the Ministry of Education. So each ministry developed its own unique set up of appraisal systems.

Mr. Black: Was a common criteria established by the Civil Service Commission, are the programs monitored by your Commission?

Mr. Daniels: Yes, they are and we have had some major studies even -- in 1986 we did a total review of all the appraisal systems in the Ontario Public Service to see the compliance level and to also look at the standardization in terms of what kind of format people were using.

So, yes, very much so; constantly monitored and constantly pushed from the top. Just, I think in 1986, the Premier himself issued a letter to all public servants saying that there was going to be a uniform appraisal system, that everybody is entitled to know where they stand and I think that was important to get that message right from the top and then that permeates down through the organization.

Mr. Black: So, for example, if I worked - it doesn't matter which ministry, let's say the Ministry of Education, one I am familiar with - if I work for the Ministry of Education, do I have an annual performance review? Do I have a written report issued which identifies the things I do well, the things I do not do well, areas marked for improvement?

Mr. Daniels: Policy requires that. It also should require to also give you some personal development. Appraisal has two components in most people's job: It is how you are doing your job and how you have done against your goals.

But it is also -- what does it mean to you personally and it might be a good chance to talk about your career, your performance development, say: This is where I need some skills, can I go on a course in this place or can I take this kind of training. So it is a very important time of the year for the employees and the manager to talk about performance, but also to talk about development.

Mr. Chairman: A supplementary on that. Would you have a team of people that do that, or two or three people or one person?

Mr. Daniels: Mr. Chairman, in terms of the ministries, some are very different and have different ways of doing it.

Some ministries offer it on a team management model and you could have multiple raters. Some ministries are very innovative and use peer review and that is something I have been encouraging is that not just how your supervisor sees you, but how people working around you do and we have experimented with peer review and, in a managerial sense, subordinates coming in and reviewing performance of executives. It is being done in the Ministry of Correctional Services, Solicitor General - which I like - so what we are looking for in leadership, it is better to ask the people you are leading how they think about you.

So there is a multiple rater assessment process done in some ministries. So they are all quite unique based on the ministry you are in. The general commitment is to have an appraisal each year. We don't try to dictate to every ministry exactly how they do it. We encourage peer review, we encourage multiple rater assessment, but we also encourage, you know, that people get together and not just one once a year, hopefully on a more regular basis.

A contract for appraisal or a relating document. Things change and you should always be constantly in and out of your boss' office to find out where you stand. It shouldn't be a once-a-year event, although that is the one point a year where it is formalized.

Mr. Chairman: Before other members carry on, further on that, if you had an individual working for say the Ministry of Labour and he was doing inspections and he was laying a lot of charges, how would you -- and the member from that area was getting a lot of letters complaining about harrassment and this type of thing -- what kind of a review would that person get in that job? Would it be the amount of charges he laid or how he handled his job? How would you review that?

Mr. Daniels: Not knowing the exact -- not having worked in that ministry, but I think you have to be careful. It is just like ticket quotas in the police. You know, you don't want to set that kind of process up, if a person is working to a quota system then you can't offset that against good common sense.

I think some jobs offer a chance to do performance on a measurement basis, but I think we have to be flexible enough to say public service: Effective dealing with the public. If the person lays more charges than were required, I think that is also good, if there are that many violations in the labour sector.

I wouldn't want somebody to have a set quota. They have to do the job as best they can. And some of our jobs do allow you to sort of do a measurement of numbers, like the welfare field worker who is under a lot of stress. It is a



very business job. We try to set standards for them that they can deal with X number of clients in the annual period, but we don't come down hard and say: Hey, you missed out, you didn't handle this many cases.

You know, because some cases are more complex. A single mother caseload may be very difficult or a handicapped employment load may be very difficult. In my own area where Allen and I work now in CCI, there is a standard of strokes per minute working in personal property in terms of that data entry. But if we sort of come down hard on a clerical person because they didn't do 10,000 strokes per day -- or 10,000 strokes per hour, I guess it is, and only did 9,000 because the computer monitors that, bit maybe the person had some complex phonecalls or some interruptions.

So nothing should be set in stone. I don't like computer monitoring myself because it breaks away from the humanity of supervision. So I would say quotas -- I would be against quotas. I would look for measurement but not quotas and I'd look for humanity in the system.

Mr. Chairman: Mr. Runciman and then Mr. Velshi.

Mr. Black: I am not done. Would you like me to give up the floor to someone else?

Mr. Chairman: Yes, we will come back to you.

Mr. Black: I will try to remember my questions then.

Mr. Chairman: All right. Mr. Runciman, Mr. Velshi.

Mr. Runciman: Thanks, Mr. Chairman.

Do you attempt to monitor the hiring practices Throughout the Civil Service? Do you know about all of the job vacancies and the advertisements that are being placed across the province?

Mr. Raymond: It is a requirement under the Act that all appointments to the Civil Service be approved by the Civil Service Commission. Within the executive ranks, if a position is not being advertised, a request must be submitted to the Commission and approval for a waiver has to be obtained by the line minister before they can actually appointed a person.

Within the bargaining unit, which represents some 88 per cent I think of all the workforce, total workforce, waivers are simply not acceptable, every position has to be advertised.

So you start from that basic premise of 88 per cent of the positions are advertised, waivers can be granted by the

deputy minister within the line ministry for a management position. Executive positions, they have to come to the Civil Service Commission.

Art, I think brought what we obtained from the secretariat, their most recent statistical information. The trend is indeed towards more, not only open competitions within the Civil Service, but open competitions open to the members of the public.

I think the increase is dramatic at 16.9 per cent, if I'm not mistaken year over year within one fiscal year.

Mr. Runciman: There is no set policy in respect to open or closed positions?

Mr. Daniels: The planning for people policy is a trend towards open competition away from restrictive. If we are going to have employment equity and become a model employer, we can't run jobs on a restricted basis and we have gone out basically on this planning for people initiative and said: open it up. And in year one, looking at '85 -- '86 statistics, '87 it has increased.

If you look at what has happened just this last year, which as yet isn't a full year - just to give you an idea - Topical went from 1,000 jobs to 5,000 jobs in one year. Topical expanded from a four-page job advertisement to a 16 pager. So we are really very pleased that more and more ministries are opening up their practices.

The policy, particularly is open, but ministries going by the law, all they need is a rule of three. So you could run a restricted area of search. But by encouragement and talking about planning for people and talking about employment equity, we are getting more.

And again, just to look at Topical as a bellringer, 50 per cent of jobs there used to be restricted and now 90 per cent are open, which shows you the flip around in a one year period.

Those will -- you have got to have that if you are going to become an equity employment person.

Mr. Runciman: The first part of that is the hiring process and the government has got about 5,000 new civil servants.

Mr. Black: Excuse me. I didn't hear that, Mr. Chairman.

Mr. Runciman: Some of the positions - I just ask you to take note of this. I know in my own riding I have a psychiatric hospital and some of those positions are union



positions and never do appear in the Topical. Whatever the reason is for that I am not sure, but I am sure that a similar situation is occurring across the province in other jurisdictions.

Mr. Daniels: So there is a definite trend away from even local postings in a hospital and ministries that don't -- and it is interesting, Mr. Runciman, you point out a very interesting fact that we at the centre were worried about, that institutions -- not just the psychiatric hospitals like in Brockville, correctional institutions and COMSOCs, like institutions for the mentally retarded have the lowest track record of open competitions, but they are the largest group of employers. When you think of them, they represent about 40 per cent of the workforce of the Ontario government.

Now, there are some good reasons for them doing that in terms of mobility of their own people. There has been a trend away from institutionalization. That means we try to make sure our existing staff get jobs through surplus and placement.

I think you will see more and more restricted recruitment in those places, not because a move away to be open, but because they have to take care of the contracting workforce in the institutional environment.

Mr. Raymond: In 86-87, Mr. Runciman, the figure I quoted was 19.4; that is, the increase in external appointments, but the number of actual competitions -- open competitions; that is, went up 16.6 per cent in 86-87 to end our fiscal year.

Mr. Runciman: One of the things that occurred recently -- and I don't know what role, if any, you play in this -- but the Ministry of Corrections and the charges of one employee of sexual abuse, there was a superior involved, and I know the Minister expressed some concerns about the fact that he hadn't been made aware of the complaints that had been generated at an earlier stage.

I am just wondering if you have any response or a role to play in ensuring that that sort of thing doesn't occur on any great frequency within the Civil Service?

Mr. Raymond: Well, I know that the Human Resources Secretariat, which is the distinct organization -- separate from the Civil Service Commission -- is actively involved in those cases.

I guess, Allen, the disciplinary measures that would be taken would be left up to the discretion of the deputy minister, the line deputy minister. But if, for dismissal reasons, the employee felt that his rights were being

denied, he could grieve dismissal in that respect.

I guess your question is: Do we put out guidelines or suggestions through line deputies as to what the appropriate procedures would be. That would be done under the egis of the Human Resources Secretariat and I know they are actively involved.

Mr. Runciman: Do you have any role to play in the implementation of Bill 8 in terms of hiring practices?

Mr. Raymond: No, there is no linguistic dimension to the activities of the Commission except that we will monitor the employment equity program which addresses Bill 8 and natives and visible minorities, the way we monitor all programs.

Mr. Runciman: What is your annual budget?

Mr. Raymond: The annual budget is about \$547,000, I can give you the exact figure in a moment. \$527.

Mr. Runciman: How does that compare to, say, three years ago with the changes in responsibilities and the...

Mr. Raymond: This is what we found difficult in responding to the questionnaire we got from the committee. Three years ago there was a single organization known as the Civil Service Commission. The total budget at that time, I think, was in the order of \$26- or \$27-million.

What you have to look at now is the budget for the Commission as a separate budget from the Human Resources Secretariat, but that budget has not decreased. The total complement for the Commission is four at the present time.

Mr. Runciman: I suspected that it hadn't decreased, the human resources section. I guess - perhaps you are not in a position to answer this - but I would like to know whether it has significantly increased, but that is for another day I guess, with the Human Resources Secretariat.

So four permanent staff of the Commission?

Mr. Raymond: At the present time.

Mr. Runciman: Plus yourself as Chairman?

Mr. Raymond: Including myself as Chairman.

Mr. Runciman: And you are at the deputy minister level?

Mr. Raymond: Yes, that is correct. The Act clearly specifies that the Chairman of the Civil Service Commission has the rank and status of a deputy minister.



Mr. Runciman: I suppose you have sort of a vested interest in responding to this -- but, do you think that is appropriate to maintain that rank, if you will, as Chairman, given the rather limited budget and the limited number of employees?

Do you think it is appropriate or should the government at some point in the future be looking at - perhaps when this transition is completed, perhaps it is now - an executive director or someone other than that of someone at the full deputy minister level doing this?

Mr. Raymond: That will very much depend on the future role of the Commission. I think that as long as the Commission exercises legal or even moral authority over deputy ministers, I think the rank and status of the Chairman is indeed an important consideration.

I know that Mr. Moore in his report recommended that the Chairman of the Commission be at the rank and status of a deputy minister. But if it had been a line deputy, it would have been a part-time line deputy minister who would have served as Chairman of the Civil Service Commission and the makeup of the Commission would have been four assistant deputy ministers.

So that is one of the issues that we are addressing at this very moment and contingent on, or depending on the role and the nature of the future Commission, that may have an impact, yes.

Mr. Runciman: When do you see those kind of changes forthcoming?

Mr. Raymond: Well, we have been very active in the last few months and we would hope that we would hope to form part of the legislative agenda for the fall session.

Mr. Runciman: Something I bumped into in my riding a while ago - I don't know how prevalent this is across government - but the Ministry of Education in a program where they had transferred a principal or vice-principal, I am not sure, and had guaranteed him a price on the sale of his home and he moved into a community in my riding and then he was transferred again.

I am not sure what the status was. Maybe it was something else, then the Ministry of Education guaranteed another price in another home. This all happened, you know, within a year or two, he had two transfers and a guaranteed price.

And I gather the ministry lost significant -- you know, in terms of the average citizen, it is a significant amount

of money. Is that program prevalent across government where you are transferring ministers?

Mr. Raymond: I can tell you as much as I know about the program. It is administered by the Ministry of Government Services, it is not a Civil Service Commission initiative.

Mr. Runciman: It is not administered by each individual minister?

Mr. Raymond: It is administered by the Minister of Government Services on behalf of each ministry. The deputy minister will need to make the determination as to whether the employee should qualify or not. That decision having been made, then it is turned over to the Ministry of Government Services and they look after the various transactions.

Mr. Runciman: Okay.

Mr. Chairman: Is there a policy laid out on that?

Mr. Raymond: Yes, a very detailed policy.

Mr. Chairman: Under the Government...?

Mr. Raymond: Under the Government Services, right.

Mr. Runciman: So we would be able to find out what that is costing us through their budget?

Mr. Raymond: But if I may just make a personal note, having moved from a smaller community to Toronto, I can tell you that it can be a very costly proposition. You can go from being mortgage free to paying a fat monthly payment on a mortgage again.

Mr. Runciman: Yes. You talked about executive pay levels and you are involved in the determination of pay levels for deputy ministers. I assume the ranges -- what is a range now for deputy ministers?

Mr. Raymond: The range -- well, the actual levels established for ECDs and deputy ministers, I guess, would be established under the advice of the -- through the executive development committee and they would come to the Commission to be ratified.

We would pass the regulation, or establish the ranges, but we do not play an active role in negotiating those actual ranges.

I think the range now is anywhere between 91,500 - is it - and \$131,000, I think that is the range for deputy ministers.



Mr. Chairman: Do you want to move on?

Mr. Daniels: It is important to remember, though, that that distribution curve puts most of the salaries towards the mid-point. That 130 odd thousand, like taking - I know my own area better, the assistant deputy minister range - it is 103 at the top, but there are no assistant deputy ministers anywhere near approaching that because we started pay-for-performance they were in the high 70 ranges.

They can only move in small chunks and they have to be super exceptional to get to that. Very few people are over a hundred per cent of their salary, being the mid-point control. So taking an ADM runs about 80 to a hundred thousand, say. Most ADMs are pegged around 90 thousand. A few would be at about 94, 95 and very -- none at all would be at the top.

So I think you have to remember, although you talk about a long salary range, in fact, we increased the ranges from 15 per cent to 50 per cent because we just were getting people always at the top.

Mr. Runciman: So theoretically you can have ADMs making more than deputies?

Mr. Daniels: Yes, you could and you could have ADMs making less than the directors, if their directors are performing better than they are because there is an overlap, or if they are a new ADM and their existing staff are very superior or exceptional performance is at the director level, sure.

Because you are paid for how you do your job not for who you are. That is the big switch around from the old hierarchy.

Mr. Chairman: Why would the deputy minister get paid more than the minister?

Mr. Raymond: I don't know that that is for me to answer, sir.

Mr. Chairman: Mr. Velshi?

Mr. Black: Mr. Chairman, can I ask a supplementary question before we leave that topic, I think it is of interest.

What I hear you saying then is that in the last two or three years you have implemented a performance appraisal system linked to a merit pay principle?

Mr. Raymond: I think one distinction, important

distinction, at this point in time we are only talking - and this is, I recognize, using technical jargon - the Executive Compensation Plan, that is the senior ranks of the Civil Service.

Mr. Black: What does that mean?

Mr. Daniels: About 700 positions.

Mr. Raymond: Assistant deputy ministers, executive directors and branch directors as above.

Mr. Black: And that has been a recent development?

Mr. Raymond: Well, the revamping of the program I guess was only as of I guess June, '86 --

Ms. Mancino: April, '87.

Mr. Raymond: April '87 was the full...

Mr. Black: Wonderful, wonderful. It is good to know that government is looking after not only the appraisal of its top executives, but their compensation as well. It must be a very forward-looking government to do so.

Mr. Runciman: I notice they don't look after members.

Mr. Chairman: Mr. Velshi, you are next.

Mr. Velshi: Mr. Raymond, I have several little questions here. Is your department proactive in looking for problems, like going, into different ministries and taking files at random, or do you wait for complaints and these complaints - if there is a complaint - does your Commission get it first or is there a review system before it gets to you?

Mr. Raymond: Well, it's the use of the word complaints -- if you are talking about grievance...

Mr. Velshi: Grievance, yes.

Mr. Raymond: There is in place - and Allen can speak in great detail to the existing systems that are out there now - but if you are talking grievance, there are various rules that are in place now and a very detailed procedure for an employee of ours to file a grievance goes through various stages. I guess, it depends on the nature of the complaint.

If it is a member of an excluded class or the management class or the executive class, there are certain things that can be grieved. If you are member of the bargaining unit, then you can grieve working conditions and almost anything



that effects you in your place of work.

But, Allen, you may want to, in greater detail, explain to Mr. Velshi the existing procedures.

Mr. Doppelt: Yes. Well, the way the procedures work right now, there is an attempt to resolve it within the ministry and the first step: The employee who feels aggrieved is supposed to give the complaint to his or her supervisor and then attempt to resolve it,

If that doesn't resolve the matter, then the deputy minister usually designates a senior, you know, member of the civil servants in the ministry to hold a hearing or a form of hearing and to make recommendations to the deputy minister and if that still -- if the employee still feels aggrieved, then there is a formal right to appeal to a grievance board and, as Mr. Raymond mentioned, if you are a member of the bargaining unit then you would then appeal to the Grievance Settlement Board and union members are represented by their Union and it really costs them nothing.

And then if you are a member of the management or excluded class, you can grieve to the Public Service Grievance Board which is a separate board and both boards are independent tribunals, but there it is a little more difficult because the management or excluded employee has to pay all of his or her costs in appealing to that tribunal and, basically both tribunals finally resolve the matter, except in the case of dismissal of a management or excluded employee or an executive employee, where there is a formal right of appeal from the Grievance Board's decision to the Lieutenant Governor-in-Council.

Mr. Velshi: So, in effect, your Commission would never ever get a complaint of grievance because it either goes to the Grievance Board or the deputy minister or to the court?

Mr. Doppelt: Well, we do have a limited role with respect to classification grievances by management and excluded employees because the Public Service Act regulation provides that the Chairman of the Commission must appoint a classification rating committee, that is again a separate -- a third tribunal that hears only classification grievances of management and excluded employees.

So we do have some involvement in that process in terms of appointment of the members of the classification rating committee but, generally speaking, we don't get involved in that process for any time.

Mr. Velshi: Thanks for that, I appreciate that, because I thought that everything comes to you, but obviously it doesn't.

So the merit principle you put into place here to say how things should work, but if it doesn't work that way you are not really aware, as a Commission, that something is drastically wrong or is working beautifully, smoothly; is that correct? Am I correct in saying that?

Mr. Raymond: Well, I think another point of clarification, if I may, Mr. Chairman.

The Grievance Settlement Board that Allen alluded to is not appointed under the Public Service Act, it is appointed under the Crown Employees Collective Bargaining Act and that is an Act that falls under the responsibility -- or is the responsibility of the Minister of Labour and not the Chairman of the Management Board who is responsible for the Public Service Act.

We in the Civil Service Commission - as Allen has indicated - only deal with the classification rating committee and that is where a member of an excluded class or the management class or the executive class feels a need to grieve, then that would fall under the egis of the Commission.

Mr. Velshi: Right. I will just tell you why I am going in this direction is that in my own office I am not too sure what is my greatest workload at this point, whether it is Workman's Compensation Board problems, housing problems or promotion within the Civil Service problems. I think they rank almost equal.

You give me the impression that there seems to be some major problems here and it seems to be taken away from political appointments which is fine, I have no problem with that, but I think the whole thing has been transferred on to a new elitist group to make their own decisions within the Civil Service and I think the very nature of the I Count Report perhaps - I don't know how you received it - but I think it is an indictment on the system, that there is something drastically wrong that needs to be put right.

Now, I don't know how you received this particular report, but do you recall it as an indictment on the present system of merit in promotions?

Mr. Raymond: I am sorry, I didn't quite get that.

Mr. Velshi: Do you look on this report, the I Count Report as being in the form of an indictment, that the system -- the merit principle system that you put in place is not working satisfactory?

Mr. Raymond: Well, I think that there are a couple of developments, recent developments that should address the very issue that you are raising, sir, and that is within the



secretariat -- the Human Resources Secretariat, the establishment of an employment -- full-blown employment equity branch whose mandate will be the promotion of employment equity initiatives.

The second point is the definition of the merit principle as we are proceeding to rewrite the PSA, the Public Service Act, I think should go some distance in accommodating employee equity initiatives, to remove any appearance of contradiction between the merit principle and employment equity program.

Mr. Daniels: I would like to add, I don't think it is an indictment of the merit system. I was involved with the Human Resources Secretariat at the time of I Count, and one of the things that I would think is important to remember is that between 1975 and the present, the Public Service was basically a flat line, no growth.

In that period of time the economy was not as strong as it is now, that means with the downsizing of the Public Service, the closing of facilities, there was no hiring from outside and there was no turnover of people in the government. In other words, between '75 and '85 you are just reshuffling the deck and a government policy, which was good, was that nobody should be laid off.

So as we closed - Mr. Runciman is fully aware of this - the St. Lawrence Centre, we made sure that nobody lost their job because that is good policy. That means, if you are downsizing, you have to find jobs for people within.

So it should be no surprise to people that we are an organization that is not growing, no turnover, whatever turnover we had we had to deal with surplus employees again.

So our equity goals were just not part of that game because we were looking at placing surplus employees, we were looking at a no growth Public Service. So it would be no surprise if somebody came along with an I Count Survey and said: Gee, look at this, the Ministries haven't done a good job in promoting visible minorities et cetera, et cetera, but there just wasn't the flexibility to do it.

But with the new planning for people and more open competitions, the economy improving and turnover taking place and the VEO which allowed more mobility -- we had no turnover at all, three per cent -- three per cent turnover in 1986 is nothing really to an organization the size of the Ontario government.

So you can't address equity goals when you are standing still. But we allowed -- we came up with the VEO to create turnover, the economy is stronger, there is more turnover in general, we had a policy of open competition, and then you

will be able to see now the achievement of those equity goals.

But I don't think there was any -- there was no policy discrimination, and no policy was there, it was just the fact that we were a stand pat organization. Anybody standing still isn't going to change.

Mr. Velshi: Thanks, I appreciate that, because what you have really got is something you have inherited.

Okay, just two little things here, Mr. Chairman, with your permission.

Two little things here: The red circle process intrigues me because on the one hand Mr. Daniels you made a statement that everything is based on performance, even to the point of the cost of living gets frozen if you feel necessary, which I am in agreement with, I have no problem with, but when you circle a position -- red circle a position, you may have one of the finest people in that position and that person gets frozen for no reason except that you have red circled that position rather than based on the performance of that person.

How do you solve that problem, Because are you not really penalizing the person because of the position the person holds?

Mr. Raymond: Well, I would expect, speaking as a line deputy, if you have an over achiever in the position that has been red circled because the nature of the position, the description or the responsibilities have somewhat been downgraded, it would not take very long for that over achiever to find another position at a more consistent rate in keeping with his aspirations and his own personal vitalis.

Red circling, while it is used, is not a common strategy to address a performance system -- at least performance problems, at least it should not be. I think that with the new pay-for-performance system that is in place now, if you do have a poor performer in a position of responsibility, it is through the performance appraisal process that you should address that issue and not simply red circle the position in order to penalize the employee.

Mr. Velshi: All right. Just a final question here.

I have on my desk a case of a particular person - I won't name the ministry or the person - but twice this person felt grieved and went to report the matter and hearings took place. Twice this person was found to be correct that his position that she was denied was hers.



Now, the position hasn't been rectified, the people that prevented this promotion are still there and they have now offered her a compensation -- a financial compensation package for whatever has happened.

Now, are we not going in the reverse here where first of all we are doing something wrong and now we are going back and saying the government should pay X number of dollars to this person because we have done something wrong?

Mr. Raymond: I think if the person saw fit to grieve through the normal process and the outcome that you are alluding to is the result of that process --

Mr. Velshi: Is it the decision of the Committee.

Mr. Raymond: No, the Civil Service Commission would not play a role in that process. We would be interested in seeing that the employee is fairly treated, that the tribunal -- the Grievance Board would and does enjoy quite a bit of independence and rightly so, in my opinion.

Mr. Doppelt: And I would just like to add a brief comment about the powers of the Grievance Board because although they do have the power to, in fact, place somebody in a position - if they felt the competition went wrongly and that person should have been, you know, appointed to that position - they also have the power to order that the competition be run again, and that may have happened in this particular case, that the whole process was run over again or, you know, a complete competition -- new competition took place again and often the Grievance Board will set out the rules or guidelines for that new competition.

Mr. Velshi: Mm-hmm.

Mr. Doppelt: And that may have happened in this case and the person wasn't awarded, you know, or didn't win the competition for whatever reason.

Mr. Velshi: Thanks very much, Mr. Chairman.

Mr. Chairman: Mr. Farnan?

Mr. Farnan: Thank you, Mr. Chairman. Some general questions, please, and I am just trying to get a fix on what the role is.

I take it that you would be responsible for the overview -- complete overview of the Civil Service?

Mr. Raymond: Well, the former role, according to the Moore Report, is quite different from the role that we now play through this period of transition.

We are responsible for the administration of the Public Service Act, we have assumed a responsibility for the protection of the merit principle. I think the basic distinction to be made between the old mode and the new mode is that policy development is now a responsibility that is vested in the Human Resources Secretariat and not in the Commission.

The Commission will serve as a tribunal and will pass the appropriate regulations flowing from the new policy initiatives that come out of the Human Resources Secretariat.

Mr. Farnan: Okay. I am not sure whether that helps me. But basically the overlap then of your role with that of the Human Resources Secretariat is what I would be looking for a definition on?

Morale within the Civil Service, we would figure depends upon people seeing realistic career paths.

Mr. Raymond: Yes.

Mr. Farnan: Obviously there are some factors that you mentioned in terms of merit which obviously would probably bring some recognition and open doors in terms of career paths.

This Committee was in Washington last week and heard some hearings of the House Committee on the Civil Service staff and let me give you this statement - and perhaps you could react to it a little.

It was made to the Committee in Washington.

"There is no question in my mind that there has been a decline in the attraction of a Civil Service career in Ontario to the most talented college students and there is an increasing flight from the Civil Service in Ontario of some of the most experienced and talented public servants."

How would you react to that kind of comment?

Mr. Raymond: Well, the planning for people initiative, the overall program that Art alluded to at the outset was meant to address that very issue, not only to make it attractive for talented people to come to the Public Service, but to find within the Public Service a career path that will meet their expectations over the span of a career.

Mr. Farnan: Do you have statistical data that would substantiate the fact that the most talented of our



graduates in, say, public administration et cetera, are being attracted to the Civil Service in increasing numbers?

Mr. Daniels: Well I think, just to answer that, that is a good question and it is exactly what planning for people is all about.

When we looked at our data we saw that we were in 19 -- through the 1970s and 80s we had lost -- we had a workforce of about 20 per cent, when I joined in the mid 60s, who were under 25 brought in from universities as trainees and apprentices.

And over the time, just because we weren't growing, we dropped to less than three per cent of our workforce were under 25 when the normal employment pattern out in the public was 20 per cent youth. So we had lost basically a whole generation of workers, maybe two generations and what we had to do was turn that around.

So we went out and developed a thing called the internship program of which we got thousands of applications from the best community and university graduates. We have a special program that tries to accelerate youth employment within the Public Service, an apprenticeship program and we are introducing new apprenticeships.

Again, a ministry like Gerard's in the 60s, you would see a lot of people apprenticing: Plumbers, electricians, et cetera, but over time we lost that group too.

So we are reintroducing apprenticeship, we are introducing internship for youth, we are reintroducing jobs when I joined the government in the 60s, trainees.

I was a personnel trainee back in the 60s at the university. I was taught the job - to learn the job on the job through training and development and there is a return to that and you will see the statistics are growing from the under 25 group. So that means we are starting to attract through the internship. We do more and more -- we had a special co-operative job fair last year just to bring in colleges and universities who are on co-operative education programs because we want more co-op programs.

In my own division right now in CCI, I have got a total co-op program...

Mr. Farnan: I think I would be happy with the answer, yes.

Mr. Daniels: The answer is yes.

Mr. Farnan: If the data is there...

Mr. Raymond: Well, the next question - if I may give you a couple of figures, if I may sir, Mr. Chairman.

In 85-6 -- I am sorry, in 86-7, 13,002 external full-time appointments involved employees under 25 years of age, a 15.1 increase over the 85-86.

Mr. Farnan: I think when I asked for a yes, it means that statistically you would be able to verify that it is the most talented -- that we could be increasing numbers of people under 25, but they may not be the most talented.

Mr. Daniels: I see what you are saying.

Mr. Farnan: And what I am saying is: Is the Civil Service attracting the most talented and is that verifiable?

Mr. Daniels: Yes, I think it is. If you look at the internship, for one job we get 400 applications.

Mr. Farnan: That doesn't say they are the most talented.

Mr. Daniels: Well, if you have 400 people, you are going to take the most talented.

Mr. Farnan: What I am saying is are the most talented of our graduates of the public administration attracted to the Civil Service?

Mr. Raymond: Sure, there are certain ministries of the Human Resources Secretariat that do go and reach out to these various groups that you are talking about.

Mr. Farnan: So at this stage, you don't have statistical data?

Ms. Mancino: Well, if I could add, and it has been a while since I have had experience with the Ministry of Transportation and Communications, but in their recruitment program for engineers, they often found that the students with the highest marks were the ones that came for interviews and were offered employment and accepted.

Now, not necessarily the ones with the highest marks are the best endowed, but that is one measure.

Mr. Farnan: Yes, that is right. Okay.

Secondly, obviously people staying on, is that a reality; or are we losing good management people to the public sector?

Mr. Raymond: Well, the turnover rate -- Art alluded to a global figure of about three per cent. One of the



problems, I guess the I Count and Hey Studies and the Moore Report identified was that there is a bit of blip in the middle of the organizational chart in the sense that the turnover within the senior ranks of the Civil Service was such that people were getting to feel a bit frustrated in not seeing openings coming up.

But the voluntary exit option, I think, will create within the senior ranks the type of mobility that the middle managers have been waiting for.

Mr. Farnan: Mr. Runciman talked about political appointments and I am not familiar with either the scope of political appointments or how far they go down the line. Like the Commission, you review the political appointments?

Mr. Raymond: No, we don't.

Mr. Farnan: You are not politically appointed?

Mr. Raymond: No.

Mr. Farnan: What about within the Civil Service as a whole, could you maybe explain to me - maybe our system is just very different from the American system - but is there a level or degree of political appointment within the Civil Services?

Mr. Raymond: Well, if you were to look at the Minister's personal staff and many members of those -- of that staff are appointed by the Minister himself and in the redrafting of the Public Service Act we are looking at the possibility for having a separate category of civil servants that would be ministerial personal appointments to a Minister's own staff.

Mr. Runciman: For (tax...) --

Mr. Furlong: That is what they used to be.

Mr. Velish: Mr. Chairman...?

Mr. Farnan: Mr. Chairman, I think I would like to keep the dimension of the question without getting partisan about this.

Mr. Raymond: The Public Service Commission, or the Public Service Act applies to all classified civil servants and to employees of boards, agencies and commissions that are listed in Management Board's manual.

There is no simple definition, but let me say that it is a Schedule 1 agency, the status of the employee working for a Schedule 1 agency is probably one of a civil servant of the ministry.

Mr. Farnan: Can I ask the question: From your experience with the Civil Service, civil servants -- there must be some resentment on the part of civil servants to the political appointments within the service, be they ministerial appointments.

And also, does that not create a roadblock to promotions within the Civil Service and tensions between new people coming in appointed by the minister and career civil servants who have to adapt to this sort of change?

Mr. Raymond: Well, let me say this and I will turn to Shirley.

I think I alluded to the fact that waivers of competitions are not possible for members of the bargaining unit. So if you start from that premise -- I think, Allen, the figure is something like 88 per cent of all positions within the Ontario Public Service are bargaining unit positions and, therefore, there can be no appointment without a full-blown competition.

Then, the waivers within the excluded class, the management class, and the executive class are few and far apart. The Commission needs to be satisfied and the line deputy through the Human Resources Secretariat needs to make a very strong case that there is no need for a competition.

There are areas where a recent competition has taken place for a very similar position where we may use that list of candidates to fill a position. If it is a field of expertise that is quite narrow, then the Commission could consider a waiver of competition.

But the rules of the game are such that appointments without - to the Public Service that is - without a full-blown competition are few and far apart.

Now, Shirley, you alluded to Washington...

Mr. Farnan: Could you define that a little bit more for me, that appointments to the Public Service are few and far apart. Is there a percentage?

Mr. Raymond: Well, the number of waivers within the executive branch in the course of a full year I think is about four or five.

Mr. Farnan: And what is the reaction?

Mr. Daniels: Those aren't political waivers --

Mr. Farnan: Because you have had a recent competition for the same job.



Mr. Daniels: No, there is no political...

Mr. Farnan: I apologize.

Mr. Raymond: The appointment is still made by the deputy minister of the Civil Service Commission, so it is not a political appointment.

Mr. Farnan: Okay, fine.

Ms. Mancino: I too was in Washington for several days last fall and I too got the impression that you seem to imply that the Civil Service is not a place for people to be employed any more because -- I got two impressions as to the reasons for that.

One was that there has been so much bureaucrat bashing by the government of the day and for such a long time that even civil servants themselves said: You know, why do we continue to do this job if we are not even looked on by our own government as valuable.

And the second one was that I also got the impression, as you seem to, that they change around their heads of agencies and several levels down and their heads of departments and several levels down every 14 to 18 months and there is a constant shuffle of political appointees that we don't have here in Ontario.

Most civil servants, you know, would not be aware of the very small numbers of political appointments that we do have here in Ontario.

In Quebec, for example, they have two levels of political appointments: Deputy ministers could be political appointments and an assistant deputy ministers could be political appointments. Here in Ontario that is not so.

So I don't think we have the same culture and I don't think we have the same morale problem based on what you experienced in the United States, or I am assuming you experienced.

Mr. Farnan: I appreciate your remarks because I think that is very true and...

Ms. Mancino: And when Federal civil servants -- Canadian Federal civil servants come to Ontario and ask us about how a system works here and what people are feeling. There is a remarkable difference in terms of morale even between us and them. I think their administration too has been somewhat guilty of bureaucrat bashing in the last five or six years.

Mr. Farnan: Yes. And I would ask then for your comments as a Board for the Civil Service: Do you find that this has been -- has not taken place within our jurisdiction, the idea of bureaucrat bashing?

Mr. Raymond: I think that the planning for people is a clear message to the workforce out there that the civil servants are indeed a valued resource and Management Board was built on a management philosophy a few years ago and the very first guiding principle is an employee is a valued resource and I think that that message is getting across to these other people.

Mr. Farnan: I am not sure that you answered the question. Is there, in your perception, or perception of a senior civil servant, a feeling that there is, on occasion -- particularly going into election, pre-election periods -- a posture of bureaucrat bashing? You don't feel that is there?

Mr. Raymond: Not to the point of creating a morale problem.

Mr. Daniels: I have never heard -- I have worked for government for almost 23 years and I have never felt other than a partnership.

Mr. Farnan: I have only one last question and that is --

Ms. Mancino: If I can make one more comment about that.

I think one of the greatest opportunities for bureaucrats to have felt unloved would have been the switch over in the last administration.

I think most bureaucrats felt that they were valued employees by the previous administration and I think that the transition from the points of view of most of us was extremely well handled and well done and most of us felt that we were just carrying on doing the political neutral job that we had always done.

Mr. Farnan: Good. Political involvement of civil servants in the political process. Do you have a comment on that, please?

Mr. Raymond: Well, yes. The civil servants -- the Civil Service Commission as of about three or four or five weeks ago I guess got the assignment.

As you know, the Law Reform Commission produced a report. That was mainly dealt with through the deputy of the Attorney General.



The Civil Service commission has now been asked in rewriting the Public Service Act, to look at existing provisions and to look at the recommendations that came forward from the Law Reform Commission and we will shall address that very issue as part of the rewrite.

Mr. Farnan: Is there a feeling among the present commissioners that you would like to see a greater number of public servants to be involved in the political process?

Mr. Raymond: Well, we haven't had a full-blown discussion within -- or amongst the commissioners at this point in time, but I think that there is a feeling that there are people who are members of the regular civil service that could indeed enjoy greater flexibility and freedom than they do at the present time.

Mr. Farnan: I think we would all appreciate that.

Mr. Chairman: Mr. Furlong?

Mr. Furlong: Yes, thank you, Mr. Chairman.

It strikes me that a number of the things we have been talking about this morning are being carried on by something other than what the Civil Service Commission is known as today and you indicate that there is legislation that you hope will come forward in the fall which will revise the Act.

I am concerned. Your role appears to be, at this stage, to monitor the merit principle, yet all the recruiting is being done, I assume, by the ministries or by the deputies, so how do you propose to do that, how can you monitor if you don't recruit?

Mr. Raymond: Well, even if I may use a parallel, Mr. Furlong, in Ottawa for instance, where all the appointments are made by the Civil Service Commission, I understand that 98 per cent of the appointments are made by the line deputy ministers. That is just a fact of life.

At the present time, what we do, we sit as a Commission and act as a tribunal, if you will allow me the expression, but I am still called upon as Chairman of the Commission to recommend all appointments, to approve all assignments.

If you are being appointed to the executive class, that requires the Civil Service Commission to approve it and the list goes on and on: Over-age appointments, assignments, waivers of competition for the excluded classes, the appointment of the members of the grievance classification, the Classification Review Committee, over-age appointments, the permission for a classified employee to supervise an unclassified employee, the establishment of new classes, the

approval of severance arrangements under Section 90 of the Act.

So we do exercise statutory responsibilities, as it is.

Mr. Furlong: I accept that and I recognize that you have the statutory authority. My concern is: Given that, you know, your staff is down considerably, do you become a rubber stamp agency for all of the other ministries?

I find it difficult to understand how with a staff, such as what you have now, a budget that you have, that you are going to be able to continue this function because I don't - maybe I don't understand the situation - but if someone comes to you and you sit as a tribunal, I assume you do some investigation into some of the things that are being proposed to you and if that is not happening, are you simply coming around and saying: A recommendation comes from Management Board, a recommendation comes down and it is simply a rubber stamp process?

Mr. Raymond: There are a number of answers, I guess, to that observation.

No. 1: There are other bodies that are involved in the personnel findings process. The Human Resources Secretariat will play a very active role before an issue arrived at the Commission.

For executives, the executive development committee plays a very active local. Now, one area that we haven't touched on to this point in time in our discussions is the personnel audit responsibilities as part of the Moore Report.

There used to be a centralized personnel audit branch. One of the Moore recommendations was that the personnel branches of the ministries within the confines of the value-for-money audits that are taking place, also be given the responsibility for personnel matters.

That is now being done. Shirley is quite active on a committee with the personnel council and the auditors council in the redrafting of the auditing functions of those branches situated in the line ministries.

Now, whether the role be actively right, I think it is a matter for considerable discussion over the next few weeks and few months.

The protection of the merit principle. We have looked at techniques that we could use in protecting the merit principle and the list is long and quite exhaustive.

There is an annual report that each deputy minister must



make now to Management Board. It is known as the management review by Management Board.

The personnel practices and responsibilities will form part of that annual report on the part of each deputy minister.

The personnel audit reports that are done by internal audit branches. We looked at, in one technique that we are using now, we have - in conjunction with the executive development committee and the Resources Secretariat - we have retained outside consultants to do a review -- an appraisal of the performance appraisal system and the pay-for-performance system.

There is a great deal of data that is collected and reviewed by the Commission -- collected by the Human Resources secretariat and reviewed by the Commission.

We could - one technique that we are looking at - we could, as a Commission directive the audit branches to look at a particular aspect of each management in a particular year at a given period of time.

We have the reports that go through the Ombudsman Office, the Ontario Humans Rights Commission, the Workers' Compensation Board, the Race Relations Directorate are all techniques that we are looking at as to whether we should be monitoring the number of complaints and the nature of the complaints that go through those other offices.

Reports on employment equity, pay equity, French language services are prepared by ministries and by central agencies and the statistical information on advertising, number of competitions, number of waivers, requested waivers. So there is a list affecting each at our disposal that is indeed very long.

I might say that while the total complement of the Commission is only the four of us plus the members of the Commission, we still rely on the Human Resources Secretariat to do all of the paperwork. They come and make full presentations to the Commission when we sit as a Board and they have to defend their proposals.

So while we don't actually mete out the policies ourselves, those policies don't just arrive on our desks from a line minister, they are screened through the various other agencies that are involved in the process.

Mr. Furlong: Given that response, given the fact that you yourselves are a tribunal, are you considering or has there been consideration in the planning for legislation to have a Commission report directly to the legislature as opposed to the Management Board?

Mr. Raymond: We have looked at about every possible option and I gave you a very quick overview of the history of the Commission in my opening statement and I guess, in a way, history is repeating itself.

At one point in time I guess the Commission Board, the Prime Minister -- Premier, knowing those days, reported to the Chairman of the Management Board.

We have looked at every possible option and we are now developing the pros and cons of those options, including reporting to the legislature, including - that is the way the system works at the federal level, 98 per cent of the appointments are made by line deputies in Ottawa - reporting to the Chairman of Management Board, the on-going relationship of reporting to the speaker, reporting to a minister designated by Orders-In-Council by the Lieutenant Governor-in-Council. So we are looking at every possible option.

Mr. Furlong: Yes. One final question and it is not in the same line.

On the appraisal system that you have, that is in place for deputy ministers, as an example, who in fact does the appraisal?

Mr. Raymond: Well, it is a fairly detailed process.

At the executive level for the assistant deputy minister, your immediate supervisor would do the formal appraisal. Now, in the case of an assistant deputy minister it can either be the responsibility of the deputy minister. In the case of an executive director, the executive director would be reviewed or the appraisal would be done by the assistant deputy minister and reviewed by the minister. So it is always one up.

Mr. Furlong: When you get to the deputy, though, who reviews him?

Mr. Raymond: The deputy minister is basically done between the deputy minister and the Secretary of Cabinet.

Mr. Furlong: So he would be -- do I assume that he would -- is he given a formal appraisal on each deputy?

Mr. Raymond: Yes.

Mr. Furlong: And is that submitted to you or to someone else, or is that kept....

Mr. Raymond: It is discussed between the Secretary of Cabinet and the line deputy.



Mr. Furlong: After these appraisals are completed and you have indicated that there is this grid that they go -- how intense is the rumor mill, how quickly does it filter down that someone got a higher than average performance rate and someone didn't get?

Mr. Raymond: Well, surprisingly enough, the rumor mill hasn't been very active, I must say, to my knowledge. I came from a line deputy and the ratings went from exceptional to no increase and it was not the cause of the source of rumors.

Mr. Furlong: Do you have - I think it was mentioned that some of these people, their performance is deemed to be below adequate are moved out. Are any of them dismissed?

Mr. Raymond: Well, as Shirley indicated, the system has only been in place since April, was it Shirley, of '87?

Ms. Mancino: (Nodding affirmatively)

Mr. Raymond: I think that every supervisor, be it the deputy minister or the assistant deputy minister, vis-a-vis the executive director, as Art indicated, has responsibility to take some corrective measures in conjunction with the employee if his performance judged to be unsatisfactory.

I think there is an attempt made at correcting the situation before the actual parting of ways takes place, but I am sure that people have seen fit to leave the employ of the Civil Service as a result of their performance appraisal.

Mr. Furlong: Thank you.

Mr. Chairman: One question, Mr. Raymond. Three years ago or four years ago, '84 of March, what would a deputy minister be making at that time?

Mr. Raymond: I would have to go back.

Mr. Chairman: You haven't got any records?

Mr. Raymond: No, I wouldn't.

Mr. Chairman: It seems to me as if it was around the 70 or 75 thousand at that time.

Mr. Raymond: Four years ago? You may well be right.

Mr. Chairman: What I wanted to find out, I was just wondering what the increase has been over the last four or five years.

Mr. Raymond: Well, as Art has indicated, I think you have to look at the range and not the top of the range as being the salary that every deputy makes in the Government of Ontario, that is simply not the case.

Mr. Daniels: You have to look at the average increases in -- you are going back to '84 through 87-88 -- '87 was the largest increase for the executive group as a total and it was less than 7 per cent.

This year it was 4.5, the year before that it was four, 4 1/2, so you haven't seen anything move. The most was just above -- just below 7 per cent and that was a major move too based on the Moore Report, the study of external salaries, you know, the recruitment difficulty and the market position. So it was all done -- even that wasn't still a full market, full-blown market.

Deputy ministers in Ontario, for instance, were -- across Canada except for the Maritime provinces - the lowest paid deputies and 20 to 30 per cent below federal deputy ministers' salaries, below most commissioners of municipalities, a thing that used to amaze me as assistant deputy minister in Social Services.

I had a \$3-billion annual budget. Most commissioners of Social Services and regional municipalities made more than I did and they only had to deal with the welfare. We had the mentally retarded, homes for the aged and all these sorts of things.

So I felt for a long time that our salaries were not -- that this movement still hasn't put us as a lead in terms of a percentile, if we talked in terms of the Hey Studies - I don't want to get too technical - but in terms of public sector pay, we are still only in the third quatral. We are not the leading employers and we not -- we are at about a third -- a 75 per cent, 80 per cent range even now.

And so we are not a leader in public service - and that is public service, we don't even deal with the private sector. If you loaded us out there against the private sector, if you talk about this 75th percentile, we are at about the 25th percentile and deputy ministers were well below the bottom 25 per cent of income earners at the executive level in Ontario.

But when you move them and compare them to earners in the public sector, meaning municipal, federal, hospitals, universities, colleges, we are about the set \*\*\*queue 75, \*\*\*queue 80.

Mr. Raymond: School boards.

Mr. Daniels: So I don't think, Mr. Chairman, we are



breaking any great leader roles in sense of overpaying or being the top end of compensation, we are a moderate compensator and I think that is always where we have targeted to be above \*\*\*queue 75 per cent, 80-85 per cent but not the top of the Public Service pays.

Mr. Chairman: I wanted to give you a chance to put that on the record because it makes a lot of people feel better about that.

Mr. Daniels: That is for sure.

Mr. Chairman: There is one thing that I can never figure out, that the Vice-principal of a School Board doesn't get as much as a principal and you can go to any of these deputy directors, they don't get as much as a director, but a deputy minister gets more than a minister and I can never ever figure that one out, why.

Any other questions, Mr. Black?

Mr. Black: Yes, I have seven questions. Thank you, Mr. Chairman.

Mr. Furlong: He had ten questions originally.

Mr. Black: I was cut off before I had a chance to ask all of my questions.

In your collective agreement is there contract language related to performance appraisal?

Mr. Raymond: Yes, in some detail.

Mr. Black: Now, what is involved in the development of the performance appraisal systems?

Mr. Raymond: Well, as Art has indicated to you earlier there are general guidelines that apply to everybody and each system is specific to the circumstances that prevail in a given ministry and I can tell you that when I was in the line position, that we had an Employee Relations Committee known as the ERC, to use the jargon, and that was one of the agenda items that kept coming back every time and we did get involved in the design of the systems, including the questionnaire, even the details of the form.

Mr. Black: The reason I asked those questions is to make the point that I think there is a general consensus that when employees are involved in the development of performance appraisal and when they are involved in the implementation of performance appraisal systems, the systems tend to be much more effective.

Mr. Raymond: I think you are absolutely right and I

think you will find that there is an open mind on the part of line deputies and ADMs in charge of human resources and line deputies to involve the people that are impacted upon by these systems.

Mr. Black: The next question: Could you file with the Committee copies of the criteria that you use for monitoring and the monitoring process for performance appraisal systems and, secondly, could you provide us with one or two or three sample performance appraisal systems from different ministries?

Mr. Raymond: Well, I think we could arrange to do that.

Mr. Daniels: Yes. That is the Human Resources Secretariat policy paper and the paper that was written last year across the province includes a lot of the samples, so sure, that could easily be provided.

Mr. Black: You can -- you will provide that to us.

Mr. Daniels: I think you should read that report and that will give you a good idea of what is happening in the performance appraisal system.

---(The Chairman withdraws)

---(Ms. Shelley Martel resumes the Chair)

Mr. Black: I guess it is an editorial comment, Madame Chairman, if I may -- marked improvements in the quality of the Chairman.

I am not as concerned about the salaries that civil servants make as some people are and I am not even concerned about the numbers necessarily. I recognize that if you are going to expect more services, then you are going to need for people to administer those services and once you move legislation from the point of having passed it to the point where you proclaim it, sometimes you need people to implement it as in the case of the Spills Bill.

Are you satisfied, as members of the Commission, that the performance appraisal system used in the public sector in Ontario are comparable to those used in the private sector and to those used in other public sector groups?

Mr. Raymond: I think you will find that, as far as the public sector is concerned, that Ontario is looked upon as being a leader in this area and has been, you know, since April of '87 there is Shirley for instance is invited one of the key not speak certificates or group leader I guess in a course offered by the filed <RAL> civil service on this very topic as well as ethical values.

As far as the private sector I think as we



move through the ranks we now have a system in place where the executive active group I understand that the secretariat and executive development Committee are now looking at expanding that advanced system to the management group and I know that a number of line ministries are revamping and keeping with the guide lines puts out by the resources secretariat or revamping their own system.

---(Acting Chairman steps down)

---(The Chairman resumes the Chair)

Mr. Black: And one final question, Mr. Chairman, if I may.

Mr. Furlong questioned the performance review of deputy ministers. You mentioned that was done by the Secretary of Cabinet. Is there, in that performance appraisal, an opportunity for the minister to have some involvement?

Mr. Raymond: Yes, there is.

Mr. Black: Thank you.

Mr. Chairman: Mr. Runciman?

Mr. Runciman: Mr. Chairman, while you were outside, Mr. Black commented that he wasn't concerned about the number of people or dollars spent.

Mr. Black: I did say that I wasn't necessarily interested in those as top a priority. As usual, Mr. Runciman hears only what he wants to hear.

Mr. Chairman: Any other questions for our delegation?

Mr. Runciman: Yes, I do.

I am just wondering, Mr. Raymond, about staggered hours of work. We heard the Civil Service Commission in Washington that this is something that an increasing percentage of employees in the federal service in the States are getting involved in; staggered starting times, four-day weeks, ten-hours a day, those kind of options that are available.

I am wondering what you are doing in that respect?

Mr. Raymond: Well, if you are directing the question to the Civil Service Commission, that will indeed be the responsibility of the Human Resources Secretariat, but we are aware of what is going on.

Again, Art was very instrumental and quite active in implementing the new programs and there were a list from job

sharing to part-time work and maybe...

Mr. Daniels: Actually this is probably my favourite topic and I don't want to go too long on this, but we have to become a more modern employer in terms of hours of work and work and family life.

I prepared a report back in 1981 called "It Is Just a Matter of Time" where the Ontario government was saying: We had to move to job sharing, to regular part-time work, to flexible hours, to variable work hours, to compressed work weeks, and we are doing that and we are encouraging it.

If you read our planning for people document you will read all through it we are encouraging the terms of work, particularly with single parents, disabled employees - and now that I am a line ADM again I have got a chance to practice what I preach - and I have done the policy work.

At CCI, in the four months I have been there, we have a new shift. In the companies branch, we are experiencing a massive inflow which is good for the economy; in other words, more people are forming partnerships, companies and corporations.

I have started a night shift, but I haven't started that night shift based on casual labour, they are regular part-time civil servants who receive prorated benefits and I didn't do a total recruitment to a general public, I went out particularly to programs I had funded in Social Services - it is good to move people around - single parents, mothers coming off welfare.

People like the hours of work. It is an off-hour shift and it is four days, five hours and we said you can pick the four days. So you can adjust your daycare, you can adjust your travel time.

As I say, we targeted it for single mothers, for older workers out of the Y Program because, again, off-hour work would be good. You don't have to hassle with the rush hour traffic or, say you are physically handicapped, the transportation is more difficult.

So we sent out to 20 different agencies that we felt could use a special type of employment atmosphere. So that is regular part-time work, four days a week, five hours a day and you pick the four days. We even allowed the flexibility. We say it can be Monday to Thursday or Tuesday to Friday. We tried to show that as an employer we can be very flexible.

And while in our land registry offices, we have a crush on at the end of the month, as some of you who are lawyers should know that, when people close deals it is the end of



the month, the 15th - extend the hours, extend the staffing to match the peak loading.

And in the Lindsay Land Registry Office - I was just there last week - I skipped part of Gerard's meeting to go up to Lindsay to see my staff because they are involved in a job sharing model.

Now, it makes sense here. In Victoria County, kindergarten kids go to school alternate days, so a couple of our staff wanted to switch roles to become regular part-time people; one works three days and one works two and we said: Yes, because work and family life have to come together. So we have got to do more and more of that in the public service.

We will be able to attract our target groups. All, I guess, are at a disadvantage for targeting. We can make work look more like and synchronized with family, help the pressures on daycare, help the pressures on the older worker, allow people to work part-time prior to retirement.

Part of the VEO we designed is was that you can work full-time and contribute to your full pension in your last five years. A lot of people have a lot of income built up. Say they have worked 30 years for the government, they have paid off a lot of their basic debts, but they want to hone into the government for that full unreduced 35-year pension.

We allow them now to work that last five years part time. I call it gliding through retirement as opposed to walking up to 65 and then going into 30-year.

So this gives you a chance to develop voluntary interests outside and we have designed a pension system so that it doesn't work against the person in that way.

So these are all very creative ways to allow people to work part-time: Older workers, single parents, working mothers, two-income families.

Demographically the population is made up of two-income families and the Public Service has to recognize that is a major target group who have heavy political operations and social work operations.

Mr. Chairman: Any more questions?

Mr. Runciman: I did, Mr. Chairman. I don't know whether you want to break.

Mr. Chairman: I would think that if we wanted to go until 12:30 at the maximum, if we complete it by then, we would not have to come back this afternoon.

If the Committee would agree to that, maybe we could wind it up before that.

Mr. Runciman: Great idea, the answer is yes.

Mr. Chairman: Okay, just proceed.

Mr. Runciman: I just wanted to ask about ethics. You mentioned that the ethics package is consistent with the public values.

Could you tell us a bit more about that?

Mr. Raymond: Yes. Based on the basic philosophy that was issued by Management Board, which promoted three basic values: One being excellence in service to the public, and can quote. I assume you are familiar with that statement:

"Quality service calls for prompt, courteous, natural responses to public requesting assistance and information. The demand is that the accent of the Ontario Public Service be consistent with those based on ethical conduct and sound administrative practices."

The second value is:

"Employees, as a critical resource to government, being committed to maximize the initiative and creativity of its employees. The achievement of this objective is assured through the provision of the leadership that ensures the personal growth and development of each individual."

And the last one being:

"Excellence in management, good management practices, focus on results, accountability, responsible decision-making and delegation of authority and responsibility to the most appropriate level."

It is based on those three values that we have developed some pilot projects.

Mr. Runciman: I guess this is sort of motherhood stuff. I guess when you were talking about ethics, I was thinking more in terms of the conflict of interest legislation that was passed to cover members and Cabinet members and whether there was some discussion at that point whether the deputies should have been included in that, but were not.

When I am thinking about ethics, I am thinking more in terms of the appropriateness of the Civil Services dealing



with the public and contracts and, you know, having their meals purchased for them and gifts -- receiving gifts and those kinds of questions.

Mr. Raymond: Well, again, we are actively involved in the rewrite of the Public Service Act. The sections that do cover the conflict of interest provisions are being re-examined. We have companion policy papers that are being developed under Shirley's leadership and dealing with gifts and hospitality.

There is secondary employment and post-employment political activities of public members. And so in re-writing the Public Service Act, those are areas that we are re-examining with a view to fine-tuning those existing provisions.

Mr. Runciman: And that is something we will see in the fall?

Mr. Raymond: Hopefully that should all be ready at the time the legislation is ready to come forward. Some of these are stand-alone initiatives that could possibly be implemented even in advance of the Public Service Act being amended.

Mr. Runciman: Okay. I just throw this in. We talked about ministerial staff being political appointments. I guess that is something you have no role to play in whatsoever and I guess it would be more Management Board in terms of setting salary ranges for the ministerial staff?

Mr. Raymond: That's correct.

Mr. Runciman: Okay. I know - I will just put this on the record, Mr. Chairman - that we did see a significant increase in the numbers of ministerial staff and the salary ranges.

Mr. Black: This is probably a lot more.

Mr. Runciman: And they are again locked up. Does anybody know the growth of this endeavour?

Mr. Chairman: Ms. Martel?

Ms. Martel: Thank you, Mr. Chairman.

Just quickly I want to return to the question of the performance appraisal program. I am encouraged by what has been happening at the executive level.

How are we ensuring what is going on in the lower ranks is province-wide? Are there standards that are being set and monitored by your Commission, or is that then the

responsibility of individual ministries?

Mr. Raymond: Well, it is under the leadership of the Human Resources Secretariat. It is indeed the responsibility of the individual ministries, but there are broad guidelines and guiding principles that are prepared, put out by the Human Resources Secretariat.

Ms. Martel: And are there reviews going on by the secretariat to ensure that those are yearly or what type of reviews or what are the numbers, in terms of, are they being done annually? I am talking about reviewing ministry policy.

Mr. Daniels: There was a major review last year of all ministries conducted on the use of performance appraisal - probably Shirley could talk to this - but part of the mandate of the new personnel audit function will be to ensure that that policy on performance appraisals is carried out. Part of any executive's appraisal is how well he does appraising other people, that is part of the job.

When I look at my directors, I want to know how they -- and I review all the appraisals they have done and it is a trickle-down effect, that each manager is responsible for how his manager -- or his subordinates or supervisors think of him.

Mr. Raymond: The most important change in approach and philosophies that I have noticed is that there is a recognition now that performance appraisal is an on-going process, it is not a once-a-year type of interview at the end of March where you set aside 20 minutes with each employee reporting to you.

That there is -- in order to be productive, there needs to be regular feedback and an on-going dialogue between the employee and the supervisor.

I think that is the most dramatic change that I have seen in the last few years.

Ms. Martel: Okay, thank you.

Mr. Chairman: Thank you.

Mr. Black?

Mr. Black: Mr. Chairman, more of a comment than a question. It seems to me that it is vital that government not only do what is right but be perceived to do what is right. I think there is, in the public perception, a great deal of concern about the competency of the Civil Service.

From what I have heard here this morning it would seem



to me that you people are doing a good job in performance appraisal and are fully conscious of the needs to make that even more effective, but I would suggest along with that improvement in performance appraisal should go a program of public awareness so the people of Ontario become knowledgeable about the new performance appraisal that is going on and the quality of that performance appraisal.

I think that is vital, Mr. Chairman, that our report should reflect that view.

Mr. Chairman: Thank you.

Is there any further questions?

Mr. Dietsch: I was just wondering, Mr. Chairman, whether you would have a system established for John Q. Public to express concerns to the Commission about any of the functions that are going on.

In relationship to Mr. Black's comments, is there an educational program that goes out into the general public to make them aware, but is there also not another opportunity or a mechanism in place where the citizens of Ontario can express concerns as to whether they have misdealings or difficult areas?

Do you get involved in that type of approach at all?

Mr. Raymond: Well, that is mainly done through the line ministries themselves for their regional offices.

When it comes to personnel practices, my experience as a line deputy is that if there is a confrontation that takes place, and an outside applicant feels frustrated, that person may like to write to the Commission, but more often than not, will write to the director of the Personnel Services Branch or to the line deputy ministry directly.

Mr. Dietsch: What type of mechanism -- or do you have a mechanism in place that attracts those types of comments though?

Mr. Raymond: The Commission, per se, has a very low public profile. I think, and rightly so -- not rightly so that we don't have a public profile -- but I think that the interface between the clients and the government should be through the line ministries.

And I am in strong support that each ministry should have its own identity and it is through that network that you should establish those links.

But we will - and we have only received one or two, I must say in the last little while, directly -- coming

directly to the Commission, and when we do, we work with the deputy minister and the assistant deputy minister and the people in the ministry to investigate whether the allegation is founded or not and make a point of getting back to the person who writes in. 2t.

Mr. Dietsch: Thank you.

Mr. Chairman: Mr. Farnan?

Mr. Farnan: Before we close, my colleague opposite mentioned he had difficulty determining from his riding constituency office what was his major problems.

I have got no difficulty at all, Workmen's Compensation board is, in my view, a horrendous situation. And I don't know where your influence, as a Commission, to bring about changes and to rectify an intolerable situation, but there are extraordinary delays, there are lost files, there is a complete lack of confidence on the part of the public and on the part of those individuals who have to deal with that board and on the part of those of us who must act as advocates for individuals who come to us for assistance.

It has been referred to by members in the House as being a swamp, a quagmire, and what is it that you can do, in your capacity as a Board for the Civil Service, to bring about some change in this particular system, because it cannot go on in the manner in which it is presently functioning?

And I would be, you know, in your position quite concerned that the image of the Civil Service and the reputation of the Civil Service might be affected by that kind of agency and the terrible deplorable services provided.

Mr. Raymond: Well, what we can do is work with the Ministry of Labour, but Allen points out to me the fact that the Workers' Compensation Board is a Schedule 3 agency and, therefore, doesn't fall under theegis of the Public Service Act.

Mr. Farnan: Does that mean that we have washed our hands of this and say...

Mr. Chairman: No, we have dealt with that agency see in this Committee, we have done an in-depth review. We might be ready for another one, maybe.

Mr. Farnan: But, Mr. Chairman, my question is in terms of the public perception there is a perception that this is a service provided by the civil servants - wherever you want to classify it - and it is a service that I think takes away from the reputation of the government and the Civil Service and I think it is a fair question to ask this Commission if



it has some influence and this is such a mess, what can be done?

Mr. Raymond: Well, what we will do is promote morale within the Public Service of Ontario, which we attempt to do, but as far as individual complaints being lodged with the Workers' Compensation Board, that is not the responsibility of the Civil Service Commission.

Mr. Farnan: Would you welcome, in reforming WCB, taking on the role of administering the WCB under the Civil Service?

Mr. Raymond: Oh, that could give rise, it seems to me, to another very fundamental question and that is: These various agencies, boards and commissions that do exist - it is important I think - that some of them enjoy a level of independence that could be jeopardized if the employees of those various bodies were all public servants in the broadest sense of the word. It raises another very fundamental question that could give rise to a long debate if we were to make them all public servants.

Mr. Chairman: I want to thank you for taking the time to come before us and to explain the situation and to answer any questions that the members had.

I am sure that we will end up with a very positive report with some of the concerns probably mentioned within it.

Thank you, once again, for appearing before us, our Committee.

Mr. Raymond: Our pleasure.

Mr. Chairman: The committee will be aware that the bus is leaving at 7:00 in the morning, so I suggest you be at the front door at ten to 7:00.

We would not want you to be much disappointed after last week of the early mornings that we met, so just to give you an opportunity, about ten to 7:00 tomorrow morning.

If there is anybody who is taking their car that is not going on the bus, I would hope that you would let our clerk know so that he can direct you by car, if need be.

The Committee stands adjourned until tomorrow morning at seven o'clock.

The committee adjourned at 12:25 p.m.





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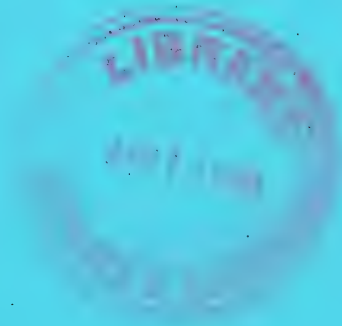
STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO FOOD TERMINAL BOARD

TUESDAY, MARCH 29, 1988

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Miss Martel

Mahoney, Steven W. (Mississauga West L) for Mr. South

Marland, Margaret (Mississauga South PC) for Mr. Jackson

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Food Terminal Board:

Collins, Allan, Chairman

Melara, Joseph, Vice-Chairman

Carsley, Bill, General Manager

Nicholas, I. Bruce, Secretary-Treasurer

Righton, Rupert F., Legal Counsel; with Shibley, Righton and McCutcheon

Bell, John P. G., Legal Counsel; with Shibley, Righton and McCutcheon



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday, March 29th, 1988

The Committee resumed at 10:30 a.m. in room 228.

Mr. Chairman: We have a representation from each party here. I didn't realize Ms. Grier was in the back there. So, we can proceed with the hearing of the Ontario Food Terminal, and I would call on the Chairman to introduce, for the purpose of the record, who he has with him and I would anticipate that he would probably have an opening statement that he would like to make.

Mr. Collins: Thank you, Mr. Chairman. I'd like to introduce our delegation who is here this morning. First on my right, Mr. W. Carsley. Mr. Carsley was appointed general manager of the Ontario Food Terminal Board in January of 1984. Also, with Mr. Carsley, is Mr. Bruce Nicholas. Mr. Nicholas is over at the side table. Mr. Nicholas was appointed Secretary-Treasurer of the Ontario Food Terminal Board February, 1984. Mr. Nicholas, however, was on staff prior to that and he started sitting in on the Board meetings as early as July of 1983.

We have legal representatives here this morning. I would first like to introduce Mr. Rupert Righton of the law firm of Shibley, Righton and McCutcheon. And Mr. Righton has been the Board's legal counsel since 1957. Mr. Righton does not sit in on Board meetings or receive minute of our meetings, but he is totally familiar with all the legal matters dealing with the Act, regulation, leases, assignments, sublets, et cetera. Assisting Mr. Righton from the same law firm, Mr. John Bell. And, as I said, he will be assisting Mr. Righton this morning.

Also on my left, Mr. Joseph Melara. Mr. Melara was appointed to the Board in November, 1985 as a Director, and has since been reappointed as Vice-Chairman of the Board in November of 1986. In business, Mr. Melara is President of a warehouse unit on the Terminal. He is president of King and Raphael, a successful wholesale produce firm operating on the Terminal. For interest sake, Mr. Melara purchased a business fifteen years ago.

For myself, my name is Allan Collins. I was appointed to the Board of Directors of the Food Terminal Board in November 1985 and reappointed for a term of three years as Chairman of the Board in November, 1986. In private business, I am a partner in the firm of J. Collins and Sons Limited, operating a vegetable farm in York County, namely the Woodbridge area. We operate fresh market production of fresh market vegetables. We do market at the Ontario Food

Terminal selling about 20 per cent of our total produce at the Ontario Food Terminal. Mr. Chairman, this is our delegation this morning.

Mr. Chairman: Please proceed with your statement.

Mr. Collins: Thank you very much.

Mr. Chairman: Yes, Mr. Velshi.

Mr. Velshi: Who is the other legal counsel? I'm just trying to put my --

Mr. Righton: Rupert Righton.

Mr. Velshi: Thank you very much.

Mr. Bell: Mr. Chairman, contrary to what people may believe, I did get lost in the corridors today thinking I was going to another committee. As the Chairman has indicated, our firm has represented the Food Terminal back since the 50's and, I believe, if we can assist the Committee with its deliberations in any way, I am very glad to assist. Thank you.

Mr. Chairman: Some of the members have probably realized that Mr. Bell is the solicitor to the Ombudsman's Committee. I have seen him here before. You may proceed with your statement.

Mr. Collins: The Ontario Food Terminal Act provided the basis for establishing the Ontario Food Terminal which was constructed on a 40 acre site in Etobicoke and started operations in the spring, 1954. The Terminal's main objective was to bring both wholesalers and growers together to serve the produce needs of the Ontario retail trade as efficiently as possible. The original financing was provided by the proceeds from a \$5-million bond issue which was fully retired as of June the 1st, 1985.

The Farmers' Market and the wholesale warehouse market together constitute one of the most successful wholesale produce markets in the world. The Terminal Farmers' Market acts as a major outlet for Ontario grown produce with approximately 20 per cent of the Ontario crop of fruits and vegetables for fresh market being sold at the Terminal. In addition, terminal is a major distribution point for locally grown bedding plants, hanging plants and cut flowers.

Growers at the terminal are also put in contact with most of the major produce buyers in the province. These contacts often allow growers to deliver their produce directly to the retailer by passing the terminal. While no figures are available on the tonnage sold in this matter, it is estimated to be very substantial. One the Board's



objectives is to foster, through the control buying hours and regulated shipping policies, a competitive marketplace where buyers and sellers can freely negotiate prices and terms of sale. If one focuses on the words competitive, as it pertains to the terminal, it can be said that with the 28 wholesale warehouse tenants, plus the 475 grower tenants, the terminal provides a very competitive form for the sale of produce. The 28 major wholesale tenants generally sell a full line of like produce. Therefore, buyers have an opportunity to negotiate prices from a position of strength.

The Farmers' Market, with its large number of tenants, is extremely competitive with a full range of high quality locally grown produce being sold by growers mainly in the spring, summer and fall seasons. The existence of the terminal has had a very positive effect on the retail produce community, particularly in the Metro Toronto area. Of the Food Terminal's 4,000 buyers, approximately 400 are independent retail produce businesses, many of which are family owned. Without an efficient and competitive one stop distribution facility such as the Food Terminal, it is highly unlikely that many of these businesses could have been successfully established.

Since 1980, a number of steps have been taken to improve the operations at the Food Terminal including the restructuring of the warehouse leases. Along with a major re-development program and several significant improvements in the physical plant. In 1984, all the 28 wholesale warehouse leaseholders agreed to change the determination for rent clauses in their leases. This had the effect of eliminating the operating deficit and putting the Terminal on a solid financial ground.

In 1981, the first phase of the Terminal redevelopment, namely the new Farmers' Market cover and parking deck was completed along with the new lease office and restaurant. In 1985, the second phase of the redevelopment program, the reconstruction of the cold storage and the short-term leaseholder's area, along with a new refrigeration system, was completed. The third phase of the Terminal redevelopment, the building of new produce selling units, along with more dock space for buyer's trucks is still being planned. However to date, considerable work has been done by the Board's Redevelopment Committee on the design and the location of these new units.

The Board and the Ministry have agreed that a process should be commenced to review the entire Ontario Food Terminal Act with a view to the amendment thereof. It is important to note that the Food Terminal has been a financially self-supporting facility. The only money received from the government was a build grant of \$2-million, that went towards the construction of the Farmers' Market cover parking deck. Since 1962, the Board has paid full

realty and business taxes to the City of Etobicoke and is the sixth largest taxpayer in Etobicoke.

The Terminal, in total, provides full-time employment for approximately 1,000 people, and approximately 200 people on a part-time basis. Included in the briefing report prepared by the Committee's Research Officer of several questions and issues for discussion, today in my opening statement, I would like to comment on some of these issues. In 1980, the Standing Committee on Procedural Affairs made three major recommendations regarding the A and B unit leases. That the perpetual right of renewal be eliminated and that restrictions be placed on the assignment on subleasing of units.

The Board has not taken action on the first two of these recommendations for the following reasons: In 1983, negotiations started with the A and B unit tenants in order to come to an agreement on rental terms for the next 30 years. The Board's first priority during these negotiations was to get the tenants to change the determination for rent clauses in their leases. This was necessary because the Terminal had incurred operating deficit for the proceeding five years, mainly because the warehouse leaseholders were on a low, fixed rent for the first 30 years of their leases. The lease for the next 30 years, beyond 1984, also provided for unrealistically low rent which, if adhered to, would have continued to produce ever increasing deficits. The A and B unit tenants were not required to agree to any change in their leases, however, after considerable negotiation, they agreed to new rental conditions in their leases which allow the Board to return to satisfactory operating surplus.

During these negotiations, some discussion took place on the possibility of changing both the assignment and the perpetuity clauses in the leases. It became quite clear that the leaseholders were not prepared to give up these rights and the Board had no power to make them do so. In regard to the assignment clause, the Board, in recent discussions, has taken the approach that a right of assignment clause in some form is an absolute necessity. This is because right of assignment in leases of this nature is a normal business practice allowing the leaseholder the ability to sell his business reaping the rewards from operating a successful company.

Generally this allows the business to continue operation in the hands of the new owner, usually with desirable affects, such as preserving jobs and continuing relationships with suppliers and customers. The perpetual feature of the leases is a controversial issue and it is believed that the tenants would object very strenuously to the elimination of perpetuity. It is very unlikely they would be prepared to negotiate such a change with the Board. Failing such a negotiated change, the Board, along with the



government, has left two options. A, negotiate with the tenant some form of compensation for a decrease in the monetary value of the lease, or B, the government could enact legislation to amend the leases. If legislation is enacted, and if it were determined that the compensation should be payable, then the legislation should so ascribe. However, if it were determined that compensation should not be payable, the legislation should specifically exclude any right to compensation. The legislation should also make provision to indemnify The Board of Directors and the management of the Ontario Food Terminal Board against possible litigation.

A further recommendation in the 1980 report was that section twelve of the Ontario Food Terminal Act be repealed because it gives the Board the power to approve of the creation of any other wholesale produce market in York and Peel counties. The Board does not believe that section twelve does create a monopoly. As section twelve does not give the Board the right to approve in any other part of the Province. In addition, there are a number of other wholesale produce enterprises conducting businesses in York and Peel counties outside the Food Terminal.

In the Act under section 13, it states that the Minister of Agriculture has the right to rescind or alter the Board's decision on any application to the Board under section twelve. The Board's solicitors have advised that section twelve of the Act does not violate any present law respecting competition including the Canada Competition Act. The Board believes section twelve should remain in the Act to protect the market against the creation of a similar produce terminal in the confines of York and Peel counties. Another terminal type market in close proximity to the present terminal would have an adverse effect on the orderly marketing and distribution of produce within Metro Toronto. A strong central market for both wholesalers and farmers is the most efficient and competitive distribution system.

The 1980 Committee recommended that restrictions be placed on the amount of space any one leaseholder can control at the Terminal. The Board agrees that this recommendation be adopted and is presently examining ways in which controls could be implemented. There has been mention made of the Board's A and B unit tenants making windfall profits when they sell their businesses and assign their leases. In the Board's view, this is not the case as windfall profits generally mean the flipping of a business or asset for the sake of producing a quick profit. There have been no quick flips at the terminal through its entire 34-year history. It should be noted that the Board does not receive the financial details when a business having an A or B unit lease is sold. However, most enterprises that have been sold on the terminal have been bought as an ongoing business and are valued in terms of good will, profitability

and assets owned, as well as the lease.

In closing, I would like to say that my colleagues and myself are fully prepared to discuss these issues as well as other issues raised in the briefing report along with any other matters of concern the Committee may have regarding the Terminal. The Food Terminal Board is committed to do its utmost to see that, as far as possible, the market is well maintained competitive and efficient. The future development of the terminal will be aimed at making the terminal a better facility through an ongoing update of the present physical plant so that major buyers will continue using the terminal as their primary source of fresh produce. Mr. Chairman, this completes the opening remarks.

Mr. Chairman: Thank you, Mr. Collins. I want to perhaps clarify a couple of points in your comments. Section five --

Mr. Collins: Mr. Chairman, I inadvertently left out a small paragraph.

Mr. Chairman: You may proceed and include that paragraph in your remarks.

Mr. Collins: This falls in at the bottom of page 6, for the record. It states, the Board has recently agreed that some restriction be placed on a tenant's right to sublet over a longer period of time. The Board is now examining ways in which changes to the subletting rights in the lease could be accomplished.

Mr. Chairman: Well, that is the very point that I wanted clarification on, really.

Ms. Grier: Are copy of the submissions available?

Mr. Chairman: Do you have copies of the submission that you have made available. Any extras of your opening statement?

Mr. Collins: We do not at this time, Mr. Chairman. We can make them available to the Committee by as early as tomorrow.

Mr. Chairman: I am wondering if maybe if we could not have them made after this morning, so that we could have them this afternoon. We could have our staff make them. We can have a copy of what you have.

Mr. Collins: Sure. No problem. Yes, I will repeat that, it falls in at the bottom of page six of this report. It says the Board has recently agreed that some restriction be placed on a tenant's right to sublet over a longer period of time. The Board is now examining ways in which changes



to the subletting rights in the lease could be accomplished.

Mr. Chairman: Okay, agreements on paragraph five in the Act says the Board may rent space in the terminal to such persons and upon such terms as the Board members considers proper and may make such arrangements and enter into such agreement with any such person as it considers advisable in the circumstances. In '83, when the previous Legislative Committee did a study into the Food Terminal operation, was it '84 that you then renewed several of the leases for 30 years? When were the leases renewed for the 30 years?

Mr. Collins: In 1984. I understood negotiations started in 1983 and were completed in 1984, about July of 1984.

Mr. Chairman: For the 30-year lease. I would like to know why you would draw up a lease for 30 years duration, and my second question to that is since '84, how many have been sublet to other people through that agreement?

Mr. Righton: Mr. Chairman, I would like to respond to that question. First of all, section five of the Act is the authority on the basis of which the Board entered into the original leases in 1954, which leases contain the rather simplistic assignment of subletting clause and for that reason I might also say, those leases also contain the perpetual right of renewal clause so that in 1984 or '83 when the Board was faced with the problem of renegotiating these leases, they were renegotiating existing leases that had built in the simplistic assignments of leasing clause and also the perpetual right of renewal and entering in those negotiations as were stated by the Chairman, the only issue that the members or tenants were prepared to deal on, if you will, had to do with the reformatizations of the method of calculating the rent. They were not interested in renegotiating either of the other two clauses.

Those clauses, since they form part of the original leases, which were binding, as between the Board and the tenants that could not be changed unless by agreement of the parties or, as has perhaps been suggested or maybe discussed, subsequent action by the legislature because other than negotiation and agreement by the parties, there is no other means of amending them.

Mr. Chairman: The second part of my question is how many has been sublet since '84?

Mr. Righton: I would have to defer to the operating people.

Mr. Carsley: I believe, sir, since '84, three units.

Mr. Chairman: Three units. Okay, I have on my list,

Mahoney, Marland, Grier, and Furlong.

Mr. Mahoney: To Mr. Collins, or perhaps to someone else who may want to answer it. As I understand it from the '79, '80 Committee Report and from what I saw this morning, the Farmers' Market is 475 tenants; is that accurate, and that if they do not show up by 6:30 in the morning, it is leased out to someone else on a first come, first serve basis. So there would seem to be some validity to your statement about competition existing in the Farmers' Market, based on that. But I wonder if you really feel that having 28 wholesale tenants and according to this Report, over half of the 60 units being leased by three major companies, I wonder if you really consider that competition in the true spirit of enterprise.

Mr. Collins: Actually, you are asking for an opinion. I am not prepared to give an opinion on that.

Mr. Mahoney: Well, through your statement, with respect, Mr. Collins, I am not meaning to cross-examine or be difficult, but you made reference on a number of occasions to it being a very competitive situation. I guess I am challenging your statement, based on the facts before us with 28 companies controlling 100 per cent of the units and three companies controlling 50 per cent of that, that would seem to me to be less than free competition. I mean, it is a closed shop with 30 years leases tying up these things and I do not know how you call it competitive.

Mr. Carsley: Well, I can attempt to answer that. We have a situation now where three companies actually no longer control 50 per cent of the space because one company, Chiovitti Banana, was sold, so that is now somewhat under 50 per cent at this point. But, in terms of that, you still have 28.

Ms. Marland: Excuse me, can I have that name again?

Mr. Carsley: Chiovitti Banana.

Ms. Marland: Thank you.

Mr. Carsley: You still have 28 people there competing and even if the person only has one unit, they could be selling and probably are selling the very same thing that one of these larger companies, who controls a lot more space is selling. So, in fact, we do have a competitive situation. As the Chairman pointed out in his statement, most of these 28 wholesalers sell like products and just because the space is somewhat smaller for some of them, they are still selling the same thing. So if you are a buyer and looking for oranges, you could probably go and get prices on oranges and I say different prices, at possibly as many as 20 places.



Mr. Mahoney: So, the competition you are referring to is strictly within the products that are handled by the 28 lessees.

Mr. Carsley: That is correct, yes?

Mr. Mahoney: But there is certainly not a competitive marketplace existing for the right to lease any space in the facility. It is a closed shop with 28 people having 30-year leases.

Mr. Carsley: That is correct, sir, yes.

Mr. Mahoney: I am curious, as well, Mr. Collins, you referred to there have been no quick flips, I think was fairly close to the statement that was made, and my understanding is that in some of the cases in the subletting, there are people, the windfall profits that are referred to in the report amount to \$60,000 a year simply for subletting the document to a new tenant. I am curious why anyone would quick flip something that has got a 30-year life expectancy at \$60,000 a year profit.

Mr. Carsley: Well, your statement is true and the Board realizes this and the Board would like to try to take some action in that regard and that was the last statement that Mr. Collins read. The Board does believe that there is a great deal of unfairness. I mean, you cannot use your premises, really, or should not be allowed to use your premises as an annuity, to sort of speak, and the Board would like to take some action there. Again, can we have our legal counsel with us. That could be difficult, too, because it is all tied up in the lease.

Mr. Chairman: Mr. Bell.

Mr. Bell: Mr. Mahoney, if I might just further assist in respect, a part really of both of your questions. The Food Terminal's position with respect to expansion of facilities, I think is well-known. It was even referenced in predecessor Committees in the 1980 report. The Food Terminal has had plans for a number of years in respect of expansion and that goes to the competitive issue that you raise.

I think the other thing to recall, sir, is that the Food Terminal has a section twelve initial approval provision. It has never been exercised, the right to withhold approval and there are other wholesaler producers that do carry on in the vicinity with the knowledge of the Food Terminal. I guess any time you have a facility that was built in the 50's and you have to, even with the capital expansion to date and you have to apply it to the 1980 market conditions, probably an argument can be made in any context that there is need for expansion of facilities and the Food Terminal

would not take issue with you on that and that may well, it may well be a significant factor, sir, in the concern that some members may have, as to the ability of wholesalers, to participate in the Food Terminal context.

Mr. Mahoney: One final comment or question, Mr. Chairman. Am I to understand then that the Board has either passed a resolution or is prepared to pass a resolution requesting the legislature to repeal section twelve and to empower you to change the leases with regard to subletting?

Mr. Bell: Forgive me, Mr. Chairman. Can I expand on the opening statements?

Mr. Chairman: I think, Mr. Bell, if you just answered the question. It would be a lot simpler. I think it is a very direct question.

Mr. Bell: Thank you, Mr. Chairman. Section twelve in the Food Terminal's view and its legal counsels view, does not create a monopoly. What section twelve does and the Food Terminal can identify I think some specific market conditions and reasons. Section twelve gives the Terminal the right to give approval to wholesalers that wish to set up operation within the geographic area defined by twelve. The Regional Municipality of York and Peel has a general definition. That right to withhold approval is subject to appeal directly to the Minister, who may, and it is a final appeal, in other words, there is no subsequent rights or recourse to the courts unless you can demonstrate that the Minister acted capriciously. He may overturn that, so in effect, the Food Terminal cannot stop anybody from carrying on a wholesale producer operation within the area if it is not in accordance with the prevailing policy direction of the government and the Minister and, sir, by any definition, that is not a monopoly. It is a right to monitor.

Mr. Mahoney: What about phase two of that question, the dealing with the leases and perpetuity and the right to assign? My question very directly is the Board, I am hearing some desire on the part of the Board to effect change. Is the Board -- have they passed a resolution? Are they prepared to do so, recommending to the legislature that changes be made in that area?

Mr. Bell: Can I assist? There are some problems in that area. If it is a fact that the leases, as in the current form, represent an asset in the hands of the tenant, the law's very clear that an Act of government by legislation to take away one's proprietary rights cannot in the absence express exclusion be done without a form of compensation and I would like to keep this discussion, if you will, in the hypothetical for very obvious reasons

If the Food Terminal were to take a categorical position



in that way, not it may. In my opinion, it would raise some significant legal issues as to the liability of the Food Terminal and its Officers and Directors and the legislation, sir, as you have noted, is silent on protection, if you will, to the Food Terminal and its Officers and Directors.

Mr. Mahoney: I am just particularly considering the fact there were new 30-year leases signed three years ago. It might be some serious concern there.

Mr. Bell: Well, except they did not have any choice because it was a right from 1954 and those leases, the Predecessor Committee even acknowledged that the market forces had then prevailed, made it necessary to have leases of that type. You had to organize and regulate the market. The problem is that we have got that hold over and absence specific direction of this Committee, through this Committee, the legislature, as to what you may view to be the appropriate corrective measures. That cannot be done. The message that I am straining to give is that please whatever you do, do not expose this Food Terminal or, in fact, the government to what may be as determined by some process, a legal obligation in respect of the decision to change.

Mr. Chairman: Mr. Dietsch, do you have a supplementary?

Mr. Dietsch: Supplementary. The response, as I understand it, was that according to the Act that you could not do anything but extend the lease and what section of the Act is that?

Mr. Bell: Well, section five, as was pointed out, gave the Food Terminal back in days of inception, the authority to negotiate leases, which it did. Section five of the Act, sir.

Mr. Dietsch: I do not read it that way. Are we talking about the one subheaded agreements?

Mr. Bell: Yes.

Mr. Dietsch: You are saying that that wording there is what spelled that out?

Mr. Bell: That is the authority in the legislation that gave the Food Terminal the right to enter into the leases as it did. And by the way, that right was endorsed by the Predecessor Committee. Those leases negotiated in 1954 -- sorry.

Mr. Dietsch: You are going to have to excuse me, because unless there is something wrong with my eyes, there is, we are talking, I am not sure what we are talking about. Are we talking about section five on page 932, chapter 334?

Mr. Bell: Section five of the Ontario Food Terminal Act, yes, sir.

Mr. Dietsch: We are a talking about the same thing and you are saying that that gives it the right to extend for a further 30 years?

Mr. Bell: No. I am sorry. I did not make myself clear. You have to you have to understand the chronology of the leases. When the Food Terminal was created by legislation, this section gave the Board the authority to enter into the original leases, private contracts between the Board, as a corporate entity that the statute created, and the tenants.

Mr. Dietsch: For a period of time.

Mr. Bell: For whatever the term was negotiated. Now, as a matter of fact, and again, the market conditions made it necessary to do so in '54, because the industry had to be organized, et cetera, et cetera. Those leases contained clauses which gave to the tenant the right within a one month notice of the first 30 years expiry, the right to renew and that, sir, is a unilateral right that vests within the tenant to renew.

Ms. Marland: My question is on this, too, Mr. Chairman.

Mr. Chairman: Were you finished?

Mr. Dietsch: No, but I will wait.

Mr. Bell: When the first and it is a matter of law that leases with those terms are valid leases in Ontario, that there is not a matter of legal policy that would strike them down. Those leases, at the expiry of the first 30 years, 1984, the tenants who held the leases exercise the right of renewal. And the Food Terminal is obliged, in law, to renew the leases. Failure to renew the leases may well have exposed the Food Terminal to causes of action in the hands of the particular tenants, which is part of what I was referring to Mr. Mahoney previously.

Section five does not give the Food Terminal the right at the end of the first 30 years to say, now we are rewriting. It gives them the right to try, which they had, as the Chairman indicated, that there were discussions under way to that extent. It does not give them the right to unilaterally impose changes and the predecessor Committee recognized that when it said that the Food Terminal does lack the authority to do that and that is why to affect that recommendation, legislation is probably required.

Mr. Chairman: Was not that recommended in '83?



Mr. Bell: In 1980, it was recommended that there be legislation to affect that recommendation, in the past.

Mr. Chairman: Okay, we will move on. Ms. Marland and then Ms. Grier.

Ms. Marland: Well, just to pick up right there. Where you say, Mr. Bell, that the lease allowed them the right to renew, are you saying that that was so open ended, that it was the right to renew under the same terms and conditions which, in fact, means the right to renew for another 30 years which is 90 years. Was there nothing that said following the right to renew in that original lease, anything else, either renew by the Board to grant the right to renewal. Well, I think whoever wrote the original lease must have had an interest in the Ontario Food Terminal. And that leads me to my next question which is how many Board members are tenants in the Food Terminal?

Mr. Collins: At the present time?

Ms. Marland: Yes, I guess we can deal with it at the present time, for an example.

Mr. Carsley: Two.

Ms. Marland: Okay, how many Board members are there?

Mr. Carsley: There are seven.

Ms. Marland: Seven, and two are tenants.

Mr. Carsley: Two are tenants. Two are wholesale tenants and two are grower tenants, farmer tenants, as it were.

Ms. Marland: So, you are saying four of the seven are tenants?

Mr. Carsley: Well, okay, four of the seven, yes, are tenants, but not A and B unit tenants, you understand what I mean. Two of them have stalls in the Farmers' Market.

Ms. Marland: Okay. Well, are two of them are A and B tenants?

Mr. Carsley: Yes. Yes.

Ms. Marland: Well, has that the never been asked or considered what a tremendous conflict that is?

Mr. Carsley: Well, we have discussed that and our solicitor has a view on that and I do not know whether you want to make your views known on that.

Ms. Marland: If your solicitor is acting in the best interests of the Board, and I would hope that the Board acts in the best interests of the operation of the Terminal and the people who own it, which are the people of Ontario; is that right?

Mr. Carsley: Yes.

Ms. Marland: Well, then I would have to understand, why there is not a conflict for two of the Board members to be tenants. So, I will be interested to hear Mr. Bell's or Mr. Righton's response.

Mr. Righton: One of the deficiencies in the Ontario Food Terminal Board Act, which not found in many other statutes dealing with proper corporations of Farm Marketing Boards, even the lowly Business Corporations Act or Corporations Acts. It is completely absent any statutory requirement as to conflicts of interest. Conflicts of interest which has gained prominence in recent years, both provincially and federally and municipally and everywhere else, most statutes have specific provisions and the standard of care or the obligations of a public servant or a member of Boards and Commissions and what have you is clearly defiant.

Having said that and making the comment again that the Board is working with an archaic Act, the Board is mindful of the common law rules that, with respect to conflict of interest, in that no one can turn to his own advantage the fact of his position in the public sense or in the private sense and in that connection, the basic rule is that where a contract or a transaction is placed before a Board of Directors, requiring approval by that Board, that any member of that Board who has an interest in that contract or transaction, should declare himself, declare his interests, and should not be counted as a quorum.

Now I am going back. These are the rules long before the more modern approaches to conflict of interest, which I think have been more recently ventilated by Mr. Justice Parker, who went a long way in terms of inquiring which he headed up, et cetera. Now, I am advised that over the years, where a contract or transaction came before the Board, at the Food Terminal, in respect of which any member of that Board had an interest, he declared his interests and did not vote on the the matter and was not counted as part of the quorum.

They have been advised. The Board has been advised of that and more recently an inquiry was made as to generally speaking as to what was the position of the Board and I have recommended, I have reminded the Board of what I am already aware, namely the principles I have expounded, to sort of



speaking, and I have suggested that having in mind historically, the choosing of members of the Board has been a matter for the Lieutenant Governor in Council and for whatever reason, the qualifications of those persons have historically been a membership in some capacity and for participation in some capacity at the Terminal and particularly, there has been representation among the A and B holders, among the farmers, among the growers. I cannot speak for any government as to what the rationale is for that purpose, but it has been the rationale since day one, and I assume, it is for the purpose of having available for deliberations at the Terminal persons who are involved in the business and have a background knowledge and would be expected to direct our affairs.

Ms. Marland: Well, I can understand that wanting to have people on the Board that understand the business that Board is responsible for administering, and I am not a regular member of this Committee, Mr. Chairman, but if I were, I would certainly make a very strong recommendation that you can have that kind of expertise on the Board without appointing people who, by their very appointment, are put in a position of conflict. I am wondering, in the past, if there have ever been more than out of seven Board members, too, that were tenants of the A and B locations.

Mr. Collins: Yes.

Ms. Marland: There have been more than two?

Mr. Collins: It was three.

Ms. Marland: It was three. Does the Board maintain a list of would-be tenants of people who desire if space becomes available in the A and B location particularly. Is there a list maintained of people that are interested?

Mr. Collins: Yes.

Ms. Marland: There is?

Mr. Carsley: We have approximately, I think it is 33 names of people who are interested if new units were ever built at the Food Terminal of companies and individuals who would be interested in acquiring a unit at the Terminal.

Ms. Marland: When this Chiovitti Bananas or I do not think I have got the name quite right even yet, but when it was sold --

Mr. Black: Chiovitti.

Ms. Marland: Thank you. How much was it sold for and to whom and was that public at the time?

Mr. Carsley: It was not public at the time and it was a share transaction. It was the company that the Chiovitti family still had an interest in, about a 50 per cent interest in, and someone else held the other 50 per cent and the Chiovitti family bought the other individual out, so it is our understanding that they now own a hundred per cent of the company.

Ms. Marland: So what it was, in fact, was sort of a bookkeeping thing internal to one company with another.

Mr. Carsley: Yes.

Ms. Marland: How much was recorded as the selling price?

Mr. Carsley: Well, we have no idea. It was a private situation.

Ms. Marland: The Board is not privy to that. When you were being asked about the leases and what needs to be amended in the Act in order to address this ridiculous situation, of these long-term leases in perpetuity, I think you were being asked if the Board has taken a position or would be formally asking the Province to amend the Act. Can we elaborate a little bit more on that, because I really find that what existed which I did not know before, but what existed before the renewal in 1984 was obviously, it just could not be in the interests of an Ontario-owned facility being to the benefit of a very close, I mean, it is really Ontario taxpayers subsidizing private business.

Because the facility is there and these people have guaranteed tenancy. Has there been any time that the Board has passed any resolution which has said to the provincial government, we recognize that when this was established in the early '50's that we could not see the situation that go now exists today and it needs to be changed and although I recognize in legal terms we are told that these leases cannot be changed, because of the way the original ones were written and I heard you very clearly on that, however, there must be a way of compensation and has the Board ever turned around and said to the Province, this is a mess. It is an unreal advantage to the people that are already there. We recommend that even if it does cost money, that we put an end to it we compensating those people and once and for all develop in some fair and equitable way of leasing of provincially-owned facility. I guess I have to ask Mr. Collins that, or someone on the Board.

Mr. Collins: Yes. It was first brought to the attention of the Board approximately June of this past year, 1987 when the Board met with senior management asking for their permission to build new produce units and asked for a government guarantee on a loan and, well, some other



information that would be required regarding the new units. So, at that particular time, we were received by the senior management and they raised these questions with us.

Ms. Marland: Excuse me, when you say senior management, who do you mean?

Mr. Collins: Senior management of the Ministry of Agricultural and Food.

Ms. Marland: Of the Ministry?

Mr. Collins: Yes, so this is the Deputy Minister's level.

Ms. Marland: Did you meet with the Deputy Minister?

Mr. Collins: Yes. It is called the senior management.

Ms. Marland: And who was the Deputy Minister?

(The Chairman withdraws  
Mr. Dietsch assumes the Chair)

The Acting Chairman: Perhaps if you would have this as your last question and then as having assumed the Chair now and wanting to perform the duties in a very impartial way, I would like to move the questioning around and then we will certainly come back to you to ask any further questions at that time. So, if you would make this one your last one, we can have Ms. Grier ask further questions.

Ms. Marland: All right, Mr. Chairman, I would be happy to do that.

Mr. Collins: Carry on.

Ms. Marland: Well, when I get the answer.

The Acting Chairman: Certainly. I am sure he will give you the answer.

Mr. Collins: I am setting the stage for her, Mr. Chairman. And we then took this under advisement. There are a number of questions asked as to we should be looking at the perpetuity, the leasing, subletting, and assignment issues. We looked at it. We eventually met back with the senior management in October the 7th, on October the 7th with these recommendations.

Ms. Marland: Of '87?

Mr. Collins: Of '87 with these recommendations. The Board recommendations were the assignment clause remain unchanged. I think this will clear up a lot of the

questions that have previously been answered as far as the Board is concerned. The assignment clause remain unchanged, restrictions be placed. I wanted to mention this before. Restrictions be placed on the subletting clause. The tenant's current right to sublet indefinitely be eliminated. Did you hear that?

Mr. Mahoney: I will ask you to repeat it.

Mr. Collins: Restrictions be placed on the sublet clause. The tenant's current right to sublet indefinitely should be eliminated.

Ms. Marland: What does that mean, that the Board could sublet but the tenant could not sublet. If you are going to place restrictions on it and then say no subletting, what does that mean?

Mr. Collins: They are suggesting that the leaseholder will still have the right to sublet for a short term but not indefinitely. We have not actually stated what the -- come up with a let us say a formula for that, but the principle is there can nonetheless. This has been agreed to by the Board. If I can give an example, for example only, for the record, because this is not definite, just to explain the point.

The head leaseholder could sublet, let us say for a period of two years. There are situations where that may be a definite benefit to the head leaseholder and a definite benefit to the person who he is leasing to. What we are saying that possibly two years would be the limit that this could be done. A decision would have to be made for the head leaseholder to dispose of his property or that lease one way or another or come back actively into the business himself. He cannot continually do this for a number of years. I think that should clarify the issue for you in your previous question.

Ms. Marland: Well, the next recommendation said no subletting. That is what I do not understand.

Mr. Black: Perhaps I have misunderstood you, though, Mr. Collins. Did I understand you to say that senior management had requested that the Board consider the question of assignment of leases?

Mr. Collins: Yes.

Mr. Black: And that the Board had gone and given consideration for that and come back with the recommendation that that clause not be changed?

Mr. Collins: No. No. The first part is correct. Your procedure is correct, but our recommendation in regard that



the assignment clause remain.

Mr. Black: So in other words, it adopted change.

Mr. Mahoney: Is that section K of page nine of the lease?

Mr. Carsley: Yes. It is a little confusing because both subletting and assignment are in that same clause which is separate.

Mr. Black: Obviously, Mr. Chairman, there must have been rationale for the decision of the Board on that particular point and I wonder while we are discussing this, if the Chairman might give us the rationale from the Board in making that decision. At the request of senior management, they examined the issue and said no. I would like to hear why they said no. There must be some logical explanation that would help us.

Mr. Carsley: Well Mr. Black, as Mr. Collins said in his opening statement, we believe that a right of assignment clause in the lease, in some form, is a necessary thing. I mean if you were a tenant and wanted to sell your business to somebody, if you did not have some form of assignment clause in your lease, then you might be barred from doing that. And so, we think for the, you know, for the on going good for the market that our tenants have to have the right to be able to sell their businesses and assign their leases.

Now, and I think that is the reason behind it. That is the reason why the Board felt it should be maintained. And I think it is a fairly normal business practice. I could be wrong to have a clause like that, you know, in a lease.

Ms. Marland: 34 firms on a waiting list, is no problem.

Mr. Black: I guess I recognize that that is normal business practice and I recognize that in most situations, you know, that would be acceptable. I am having some difficulty, however, when we recognize that despite what you may feel we are in some kind of a monopoly situation, where we have 28 firms who are controlling a number of outlets, 34 on the waiting list wanting to get in and we have had requests from at least one government committee and perhaps two in the past five years that this be reexamined. We then have a request from senior management, the Minister of Agriculture that it be reexamined. It seems to me that I am having difficulty.

Mr. Carsley: Could I say something, because I think this is quite important. I have been at the Food Terminal since the beginning of 1984. My associate, Bruce Nicholas, has been at the Terminal a longer period of time but he was not involved in Board decisions or at Board meetings until

the former general manager died, which was in 1983. So management really does not have all the background as to what went on prior to 1984 and then our Directors are all new. Mr. Collins did not go on the Board, I think, until 1980 five, so some of the things that happened in the past, we were not privy to what happened. We were told by our Chairman at the time, as management, that we were to go and get the best deal we could in terms of getting the leases changed, the determination of rent for rent in the lease is changed and that is what we were told to do. Now, where he was getting his instruction from, we are not entirely sure. I mean, we assume from possibly the Ministry.

Mr. Black: This was in?

Mr. Carsley: This was in 1983, '84, you see. Now, one of the reasons why that was a priority at the time was that we were losing money and our former Chairman was, you know, very strong in the fact that the bleeding to sort of speak should stop and the thing should get on a firm financial footing so it did not cost the taxpayer anything which it really has not except for the bild grant. That is a fact we are very proud of and recently this all now comes up again because the Ministry is now concerned and the Senior Management Committee has recommended to our Chairman that we look at these issues and we are trying, the Board is trying to do that, but it is difficult because, you know, we are bound by these leases.

Mr. Black: Is it possible to get the names of the people who negotiated this initial 30 years lease?

Mr. Carsley: Well, George Drew, I guess. I do not know. I am not trying to be facetious. Well, sir, on that point, going back into the history, and I do not want to belabour this, but going back into history, you saw those pictures on the wall of the Old Market where the wholesalers were. The wholesalers have been there for many years. The government decided that a Food Terminal was a good idea. Many of these wholesalers, some of who are still alive today and still in business today, did not want to move.

So, I guess as time went on, maybe whoever was handling the thing sweetened up the pot and they still did not want to move and our understanding is and I know this may sound a little funny now, but they had to get George Drew to get them together in a room and bang their heads together and tell them that they have to move and just as that happened, the Old Market burned down, so they have no choice but to move.

Now, that is in a nutshell. I am not really trying to be facetious, but that is how it is told us. We do not know who the people, the players were in terms of marketing.



Mr. Bell: Maybe I can assist in chapter one of the book. I think it will assist. Sorry, Mr. Chairman. I think the question was asked by one of the members who negotiated this thing in the first place or how did it start. We cannot give you a lot of detail except as all lawyers will do when the heat is on, they will say it was not my firm and I can confirm that. It was not the issue, that is right.

What we can assist you with is some partial chronology in terms of chicken and egg, ie. negotiation lease. We do know that the lease was prepared by legal counsel within the then Department of Agriculture. Exactly who had the input, as for the terms of the lease, I am sorry, there is nobody currently around and I am not sure minutes would reflect that although we certainly and I believe the lease was presented in printed form for execution or for formalization. And you may draw inferences from that. In one context, you may draw the others. I think it is fair to say that the automobile was fairly well constructed and the gasoline was in the tank and the key was turned on before the first Board was given the driving lesson, if I can use that metaphor.

But, again, and please forgive me for repeating it that that created the script, if you even look at your predecessor Committee's own report, I think it is at page 22. They acknowledge that even though that a necessity, a market necessity at the time, there are problems with it now, then and now, but the script was written and you do not change scripts without incurring or without, at least, having to give very serious consideration to the implications and, you know, the lawyers are not here today, you know, simply to, you know, appear as mouthpieces. There is a substantial concern as to what the implications of the recommendations are and those concerns are not confined to the Board and the Board's management but are also concerns in respect of the government ie. the Ministry, but that maybe subject of discussion later.

The Acting Chairman: Thank you, very much. Ms. Grier.

Ms. Grier: Thank you, Mr. Chairman. I guess, just to stay on the same topic, I am not clear as to what you either believe that your responsibility is to implement those changes or you wish your responsibility to be. When you say that the Board has recommended that assignment remain unchanged that there be restrictions and subletting and that indefinite subletting be eliminated, do you feel you have the power within yourselves to implement those changes or are you looking for a change in legislation?

Mr. Collins: I can say to the Board that we were asked to make recommendations and these were the recommendations from the Board.

Ms. Grier: Recommendations as to how the Board should conduct itself in future or recommendations as to something the Minister should do?

Mr. Collins: May I assist? Recommendations as to how the Board should operate in the future.

Ms. Grier: So, therefore they are decisions. If there are things you can do, why do you need to make a recommendation to the Minister that you should do them?

Mr. Bell: Ms. Grier, fundamentally, the Board lacks the authority to implement the two recommendations we are talking about and that is recognized by your predecessor Committee that legislation was required to, in the view of your predecessor Committee and we commend that view to this Committee, you cannot unilaterally change a lease, which is a lease valid in law, you cannot, obviously you cannot change a section of the Act without legislative amendment.

This Board lacks the authority to impose the changes as reflected by the previous Committee's report in the discussion today. This Board does not lack the ability to attempt to negotiate and there were attempts, as the Chairman's opening statement indicates, in 1983 and '84 and the message was received, I think, very clearly from the tenants no negotiation on that point.

Ms. Grier: The leases were signed in '84, are they for a 30-year period?

Mr. Collins: Yes.

Ms. Grier: Do they have a right to renew?

Mr. Collins: Yes.

Ms. Grier: So, we have, in fact, got the situation at least in my end of term, my end. Right. And can I talk a bit about the ways around it, because I was interested, that you indicated that you had either to negotiate and perhaps compensate, if you changed this aspect, or that you required legislation. You did not mention, as one of your options, and increasing the number of units and increase competition. And I notice in the first report of '79, you were then talking about expanding, but that Committee made the point that one of the causes of the long delay in establishing a new site and therefore, expanded site was uncertainty as to the status of the leases in the event of a move. And I am wondering what has inhibited expansion and since 1980 -- excuse me in '79, you were talking either move to a new site and a larger number of units or expand on the site.

The Board made the decision to stay in Etobicoke and to



expand on that site. But, none of that expansion has occurred. And would that not be a way of at least opening up the situation if you created another 20, 30, 40 new units.

Mr. Carsley: Well, we agree it would it be, but when it was decided that and this is my understanding of the situation. I was not there, but when it was decided that the market would not move to the new site, and that the present site would be redeveloped, a proposal for redevelopment, was presented by the Board to the Ministry. Now, this proposal, was a major overhaul of the market. There would have been a number of new units, there would have been a complete new cold storage system.

However, the problem the Board ran up against, and the Ministry said that is fine, I gather. The problem the Board ran up against was that it was going to cost over \$10-million and the question came up where is the money going to come from. And you know, the Ministry could not fund a \$10-million expansion. So, what the Board had to do was try to make itself as get itself back, okay, on a firm financial ground, and there were a number of things that needed doing very desperately. Number one, we have to get the cars off the floor of the market. There have to be some other place to park. So the parking deck was the first priority. That was the first phase of redevelopment and it was finished I think in July of 1982 and that was a \$4.7-million expansion.

The next priority was the cold storage and again, the funds were -- most of the funds -- well, all of the funds for the cold storage have to be generated by the Food Terminal Board and if we had not done something to the cold storage, then the whole place would have, you know, it would have ceased to exist. The equipment was old, the walls were falling down, so that was another \$2.2-million we had to spend to refurbish the cold storage. So now we are up to about \$6-million and basically, with the exception of the build grant, the Food Terminal used its own funds, much of it generated internally to make these improvements. And it was always, the way it was set up, the new units were always to be the last phase of redevelopment. And we are at that point now.

Ms. Grier: But it seems to me that if a subtenant is being asked to pay 800,000 for the assignment of a lease and if subtenant is willing to pay a \$100,000 a year in rent to the perpetual leaseholder, that if you created new units, you should surely be able to almost finance their construction and expansion by the sale of those units to new tenants.

Mr. Carsley: Well, certainly that is true. Some of the -- a lot of the financing could be done or would be done

internally, all of it would be, in fact. But those other two things were our first priority.

Ms. Grier: How many new units are you now looking at?

Mr. Carsley: We are looking at the possibility of eight new units.

Ms. Grier: When I raised this issue in the legislature, the Minister replied last December, that he hoped construction would start in the Spring of '88. What are we now looking at as a target?

Mr. Carsley: Well, first it has been to be approved by the Board. The Ministry has given the go ahead, and I would have to say, I cannot speak for the Board, but we would be looking now to maybe do something in the Fall in terms of going out and you know, in fact, having drawings done and being able to go out to get to get quotes or to tender the thing.

Ms. Grier: When did you get Ministry approval for the expansion?

Mr. Carsley: Ministry approval came, Allan when, in July of -- I cannot remember. I forget. They agreed in principle in July, but then we went back, I guess, in October, and they said, okay, go ahead. You have our permission to go ahead with new units.

Ms. Grier: Okay, so you got approval in July of '87 and yet, you still have not had the Board decide to go ahead with it or to draw the plans for it.

Mr. Carsley: Sorry, it was in November, Mr. Chairman.

Ms. Grier: November of '87.

Mr. Black: So you had approval to proceed, but the Board has not proceeded.

Mr. Carsley: Yes, and one of the things, of course, that happened was that the terms, okay, after that, we did not have a full Board meeting until this March, because there was a period of time when we did not have a full Board and you may know the story behind that. Some of our Board members terminated on November 18th and they were not replaced until, I believe, sometime in what was it? February 22nd.

Ms. Grier: Because the Minister was not aware there was a vacancy.

Mr. Carsley: Well, that I do not know. Certainly the Ministry allowed -- heavens, of course, the Ministry knew



there was a vacancy.

Ms. Grier: As soon as I brought it to the Minister's attention, he filled the vacancy. So, I do not know how it went that long without it, if that is what was holding you up on expansion.

Mr. Carsley: Well, the thing is that the Chairman did not want to get down to the fine points of expansion so to speak until he had a full Board.

Ms. Grier: Can I move a bit to the whole question of the position of the Food Terminal within Ontario and I notice the Act as you have made plain talks about your monopoly position in Peel and York. And why has there never been another Food Terminal constructed beyond those borders? It could have been constructed in Halton or Durham. Why has it not ever happened?

Mr. Collins: There is no reason why one could not be built in those other areas outside of Peel or York. All the Act restricts is another Food Terminal, similar Food Terminal within jurisdictions of Peel and York. So the answer to your question is it could be. To my knowledge, and the knowledge of others, there has never been a request for one. If one were requested, we would be very, very happy to entertain and have a look at it. I am sure we would be asked for our opinions and we would be very happy to give those opinions.

Ms. Grier: But if I was one of the 28 wholesale tenants with the secured position in the Food Terminal and presumably, I would then be one of the giants of the food industry.

Mr. Collins: Excuse me. It was brought to my attention, I failed to mention that we do not have the jurisdiction in those other areas in any way.

Ms. Grier: Okay I am just trying to understand the competitive market in the food industry, I guess, which I think is pertinent to all of this. Why would any of the 28 tenants who have a secure and perpetual position at the existing Food Terminal, have any interest in ever seeing a competitive Terminal established. As long as they are in that position, are we ever going to see another Terminal anywhere or, in fact, a real expansion?

Mr. Melara: I do not believe they have a right to make a decision on that. Like a decision would not be from the present leaseholders, because it is out of their jurisdiction of the entire Food Terminal. So, if someone so decided to build a Terminal in that area, the operators of the present Food Terminal would have no say so in it.

Ms. Grier: But the industry itself has never felt the need or the pressure for another terminal or expressed a desire for another terminal, have they?

Mr. Collins: No. In fact, the present Board, the Board last year and the Board this year, supports the retention of section twelve. We think that one market within York and Peel is the most efficient and type of market to have, the most competitive.

The Acting Chairman: I think Mr. Bell had some clarification to part of your question.

Mr. Bell: I think clearly the decision of another Food Terminal, both within the defined area of section twelve and without, the rest of the Province, is clearly the Minister's decision. Within the defined area, he has the final say. Without the final area, you would require new legislation.

Ms. Grier: I recognize that entirely. I am trying to get understanding of the Industry's position on it.

The Acting Chairman: Can I just get a further clarification to that remark. Are you telling me that the Board itself does no long-range planning other than the confines of the one Terminal itself. Is that what I hear you saying? Are you saying that it is totally a Ministry question and it is not the Ontario Food Terminal Board has no authority to develop long-range planning to look at anything else?

Mr. Bell: Well, I think your question is in two parts. Long range planning within the defined area, this Board has engaged in for quite some time, the 1980 plans for expansion and perhaps relocation as an example. But, within the defined area, it would seem to me that if this Board attempted to do any long-range planning for say a Sudbury Food Terminal, it would be told thank you for your views, but it is the matter of the Ministry.

The Acting Chairman: So, what I hear you saying then is you only have authority for within the defined area and have no authority for anything else?

Mr. Bell: And equally as important, the Board has always considered that its authority is within the defined area only and that I do not think it is presumed to be encroach outside.

The Acting Chairman: That is spelled out in the Act, as well.

Mr. Carsley: Section twelve, yes. Ms. Grier is saying little bit about the industry. I doubt, at this point whether there is a centre of population in the rest of the



Province that could support another Food Terminal and I think that is why seriously. Do not forget, we are looking at a wholesale Food Terminal. The backbone of this Food Terminal are the smaller green grocery buyers who are mostly around Metro Toronto. Now, If you were to go to Northern Ontario, you would not find many green grocers. You would probably find very few and what you would find, though, is that the major chain stores have, in the North, I think, have a fairly substantial share of the market up there, and they buy most of their stuff direct. So, who would be the customers for a Food Terminal. I think that is what you --

Ms. Grier: Okay, I guess, that, Mr. Chairman, is part of what I am trying to understand. I am sorry. There was a supplementary.

Mr. Lipsett: Mr. Chairman, I am still not clear on the expansion of mandate of the Board. Are you saying that your mandate to expand is only at the present site or an alternate site or could it be at two sites at once, in the future?

Mr. Carsley: In York or Peel county, yes. I mean, presumably. If this Board was going to have another terminal somewhere else in York or Peel country that would come under the Ontario Food Terminal Act as such.

Mr. Lipsett: You could do that?

Mr. Carsley: I think so, could we not?

Ms. Grier: The recommendation for the past Committee was that the Ministry consider expanding the Ontario Food Terminal Board into other areas of the Province. That never happened.

Mr. Carsley: No. I think it is for those reasons that I was putting forth.

Ms. Grier: I guess what I was trying to clarify, Mr. Chairman, is the whole issue of the mandate of the Board and the objective that I think Mr. Collins identified as having a competitive marketplace for produce within the Province of Ontario and you expressed it entirely in terms of the wholesale market.

Mr. Collins: Within Metro Toronto.

Ms. Grier: Except, I think when you look at the actual objectives of the Board that are in the research report provided to the Committee, it talks more broadly of providing a marketplace for Ontario growers. And I am wondering how many of the wholesalers, or specifically how many of the major holders of A and B units are not only wholesaler but retailers and what that does to the

competitive marketplace.

Mr. Carsley: I believe there is one unit that is owned by two retailers. They do not operate it, though.

Ms. Grier: I see. So none of the other leaseholders are also in the retail business?

Mr. Carsley: Well, that is not exactly true.

Mr. Collins: I do not think that really happened. I do not know where you are coming at here.

Ms. Grier: I guess I am coming at --

Mr. Collins: We do not have any control of who those leaseholders are anyway. The leaseholder can sublet, assign his lease, what maybe has happened over the years and really the Board, under the Act that we have now, cannot unreasonably withhold permission from the assignment.

Ms. Grier: So, how many leases have now been assigned?

Mr. Collins: So, that person, the new leaseholder happens to be connected somehow in retail business, there really is not anything particular Board or any Board under the Act can do about that any way.

Ms. Grier: How many leases have been assigned?

Mr. Carsley: Since the beginning?

Ms. Grier: Well, of the current situation, I am really not interested in the history, but as it exists now, how many are original or leaseholders with you and how many have been sublet?

Mr. Carsley: Excuse me. You say sublet once and assigned once. What do you mean?

Ms. Grier: Perhaps I could ask you for the distinction, because maybe I am just confusing the two.

Mr. Carsley: You are.

Ms. Grier: Okay. Explain it to me, then.

Mr. Carsley: That will establish that.

Ms. Grier: They are in the same phrase in clause K of the lease. A tenant will not assign or sublet without leave. Tell me the distinction.

Mr. Carsley: I might explain that.



Mr. Righton: I wonder, Mr. Chairman, if I might give a very brief and simple law lecture now and try to keep it very simple. But I am interested that it has finally come to the surface as being a very important distinction. As everyone knows, the lease is a contract between a landlord and a tenant, an owner and a tenant. If the tenant wishes to assign or transfer his interests, he assigns or transfers all of his interests, as a tenant, to another party and that other party contractually stands in the shoes of the original tenant, although, as the original tenant, they are still contractually bound to the landlord. Merely by assigning your lease, you cannot escape your obligations from the original lease.

Ms. Grier: So, it is sort of a permanent transfer in a sense.

Mr. Righton: It is permanent transfer in that sense. A sublease, however, is a transfer of a portion of the original interest, ie, the term. There must be a withholding of at least one day. For example in a 30-year lease, you can sublet for anything up to 30 years less a day, any one of the combinations that you wish. Now, in that contractual relationship, you now have three parties. You have a original lease contract between the landlord and the original tenant. You now have a sub or under leasing, which is a new contract of sublease between the original tenant and the sublease.

Ms. Grier: And how many sublessees are there now?

Mr. Carsley: Five, I believe.

Ms. Grier: Five sublessees. And they pay rent to the original leaseholder as well as paying to you?

Mr. Carsley: No. They pay rent. They pay the original leaseholder pays rent to us, and the sublessee pays rent to the original leaseholder.

Ms. Grier: And you have no control over the difference between those amounts? If he is paying 100,000 to the original leaseholder and the original leaseholder is paying you 10,000, you have no jurisdiction over that?

Mr. Carsley: No.

Ms. Grier: Now, if he wants to assign it, do you have any jurisdiction over the cost of assigning a lease to a new lesee?

Mr. Carsley: No.

Ms. Grier: But you do have the right to approve or reject?

Mr. Carsley: Yes, but you must go on to the next sentence which, I think, is key and I just have not got it, the thing in front of me, the lease in front of me, but it says will not unreasonably withhold consent. So, the Board does not have a lot of power in that regard because in order to withhold its consent, the person that wanted to acquire the lease or acquire the business, would have to probably prove, or the Board would have to prove that they were, you know, financially incapable or they were ready to be convicted, for some, you know, hideous crime or something like that.

So, really, it is and I think, I am not a lawyer, but I think our counsellor here can perhaps give you better terms.

Mr. Righton: I think in general terms have adequately express. I would be glad to expand on it if it is not understood.

Ms. Grier: Can I come to the point Ms. Marland raised about the conflict of interest, then. Do I take from your definition of that, that if I, as a Board member, held a lease and the assignment or subletting of my particular lease was under discussion, I would absent myself for that discussion. But if the assignment or subletting of somebody else's lease was under discussion and I would not be considered to have a conflict.

Mr. Carsley: That is the way it has gone at the moment.

Ms. Grier: And that surely if my neighbour can get 800,000 for the assignment of his lease, that is in my interests because it increases the value of my lease.

The Acting Chairman: Mr. Bell.

Mr. Bell: Mr. Chairman, through Ms. Grier, the matter of a conflict of interest as this house knows from some recent experience is a very difficult complex in a matter of law. The ownership of a lease, the ownership of a leasehold interest does not, of itself, disqualify anybody from sitting on the Board of Directors. When you say conflict of interest, you have to identify an interest with a duty and the interest is usually a specific interest.

So, therefore it is determined by subject matter. I think I can answer it. There may be circumstances where a consideration by the Board of somebody else's leasehold interest, might well be an interest that would create the personal obligation on the Directors with a similar interest. There are other circumstances where they would not have anything to do with one another. You really have to examine it against specific facts. I can think of a number of circumstances where the treatment of another



tenant's lease would not of itself create a conflict of interest.

You see, unlike the political conflict of interest that Mr. Justice Parker addressed, as the Public Accounts Committee and the Legislative Assembly Committee addressed, I had something to do with one of those. The perception test does not exist. These will be the corporate conflict of interest. You have to identify a conflict, in fact, in law. And the Municipal Conflict of Interest Act, for example, and Mr. Justice Holland in the North York decision created what is called a public perception test and municipal politicians in this Province are at risk of a finding under that Act, if there is a perception. That and some might believe and argue that that has been the test in this legislature, prior to the Bill that was tabled within this session. But that perception test does not exist in the context of this Board.

The Acting Chairman: Should it?

Mr. Bell: Should it? No, as far as I am concerned, the public perception test, as it exists in the Municipal Conflict of Interest Act, or as it may have existed in the Premier's guidelines so-called, is a fit too tough to expect good people to continue to participate. And it is, as a lawyer, you cannot advise anybody in respect of that, what is or what is not. No. I think a public perception test is bit too much like jelly on the wall, quite frankly.

The Acting Chairman: I think Ms. Grier has another question and then what we will do is we will break for lunch and resume at 2:00, but we also like if you could bring us back some information which I will address after the question.

Ms. Grier: Just a final question, if I might, Mr. Chairman, back to the whole issue of whether we are looking for a change in legislation and the Board has asked for that or whether it is the Board because I find myself when I review the answers I got a little confused by a letter that the Minister was kind enough to send me yesterday telling me this Committee would be dealing with it in response to my request as to which of the 1979 lease recommendations have been implemented.

And the Minister says the Board has determined that subletting should be restricted for both the proposed new C unit leases and the existing leases. The Board has also decided that a limit should be placed on the number of units an individual wholesale firm can lease. So, I take it the Minister is correct and those are firm decisions in Board policy.

Mr. Bell: That is right.

Ms. Grier: Thank you very much.

Mr. Bell: If I may.

The Acting Chairman: Mr. Bell.

Mr. Bell: Just in context of the second part, that is, if you will, a decentralization of unit holdings. That is very similar, Ms. Grier, to the issue of whether the assignment or the perpetuity clause should be removed, because you have to deal with what exists in respect of what should be and if you are talking about a position of decentralization, again probably by legislative amendment, there may be some, there may be financial consequences in respect to that as well, so the Board's concerns as expressed to you today dealing with the perpetuity clause also applies to the decentralization issue.

The Acting Chairman: Mr. Velshi has a subsequent question.

Mr. Velshi: I am not going to ask any questions except to request from you, Mr. Chairman, before we break, we sit for five or ten minutes in camera, just as a Committee, to see the direction that we are heading in.

Ms. Marland: Could we do that at 2:00. I would be happy to do it if we could do it at 2:00.

Mr. Velshi: Whatever time. I do not mind that. I think just for a few minutes to get our thoughts in order. We are all over the place here. I realize it and I do not think we are going to be finished that today and we will be carrying on.

The Acting Chairman: Okay. Mr. Collins, perhaps you might be kind enough to give us a copy of the new recommendations that you have put forward and perhaps we can have a copy of your opening statement that you made this morning and I believe, Mr. Furlong was next.

Mr. Furlong: I am going to be pursuing some questions this afternoon and I would like to know the names and addresses of the leaseholders, whether they be assignees or leaseholders in 1979 and I would like the members of the Board given that most of them are new, to perhaps check with their, if they can over the break, to familiarize themselves with the position of not to expand with another facility in 1980.

Mr. Carsley: Excuse me. Could you repeat that, sir?

Mr. Furlong: I would like to know the names of all of the leaseholders or assignees in 1979, 1980 and further I



would like to know the names of the members of the Board at that same period of time, when consideration was being given, or when the decision was made to stay at the present site as opposed to expanding the Vaughan site.

The Acting Chairman: I think that perhaps, Mr. Collins, ask your delegation to come back in at 2:30 and our Committee will meet at 2:00. Thank you very much.

This committee is adjourned until 2:00 o'clock.

The committee adjourned at 1:00 p.m.





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Publication

STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO FOOD TERMINAL BOARD

TUESDAY, MARCH 29, 1988

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Miss Martel

Mahoney, Steven W. (Mississauga West L) for Mr. South

Marland, Margaret (Mississauga South PC) for Mr. Jackson

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Food Terminal Board:

Collins, Allan, Chairman

Melara, Joseph, Vice-Chairman

Carsley, Bill, General Manager

Nicholas, I. Bruce, Secretary-Treasurer

Righton, Rupert F., Legal Counsel; with Shibley, Righton and McCutcheon

Bell, John P. G., Legal Counsel; with Shibley, Righton and McCutcheon



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday, March 29, 1988

The committee resumed at 2:10 p.m. in room 228.

The Acting Chairman: We will reconvene and the first questioner I have for this afternoon session is Mr. Furlong.

Mr. Furlong: Thank you, Mr. Chairman. I indicated this morning that I was interested in some activity of the Board in the 1979, 1980 period. And I have been presented with a list of the leaseholders as they were in 1979, 1980 and also the members of the Board at that time and I wonder if I might start by asking it has only been given to me in an annual report. Sorry, it has been just marked up in the annual report. I would like to ask questions specifically about the gentlemen that are involved or that were on the Board at that time. There is a Mr. Williams. Was he an Officer or a Director of any of the companies that held leaseholds?

Mr. Carsley: No. No.

Mr. Furlong: Was Jim McCarthy an Officer or Director of any of the corporations that had leaseholds?

Mr. Carsley: No. He was a tenant in the Farmers' Market, but he had no interest in an A or B unit.

Mr. Furlong: How about, the writing is Arrigo.

Mr. Carsley: Yes. He was the tenant. He is the owner of the F. G. Lister Company.

Mr. Furlong: Mr. Wolfe.

Mr. Carsley: Yes. Mr. Wolfe is the Vice-President of Oshawa Wholesale and the owners of Ontario Produce and they are a tenant in the Food Terminal.

Mr. Furlong: Mr. Davis.

Mr. Carsley: Mr. Davis has no interest in or had no interest in an A and B unit. He is a tenant in the Farmers' Market.

Mr. Furlong: Mr. Ransom.

Mr. Carsley: He was a peach grower, I believe, from vineland or someplace that had no interest in the market at all.

Mr. Furlong: And there is a F. Darrigo.

Mr. Carrothers: Darrigo. He was a buyer of the old Darrigo stores.

Mr. Furlong: Who was the general manger at that time?

Mr. Carsley: Mr. Harry Aasman.

Mr. Furlong: Was involved in any of these?

Mr. Carsley: No. Absolutely not. He is deceased at this point.

Mr. Furlong: I understand that in 1979 or 1980, I suppose I should ask the question. Did the Board own land in the Vaughan Township?

Mr. Carsley: At that period, yes.

Mr. Furlong: Was there some consideration at that time to move the operation from the present location to Vaughan Township?

Mr. Carsley: Yes, there was.

Mr. Furlong: And I take it at some time, that decision was made not to move?

Mr. Carsley: Correct.

Mr. Furlong: Did you know exactly when that was?

Mr. Carsley: I would have to defer to Mr. Melara or my associate, Mr. Nicholas. Okay, I actually I may have some notes here. I believe it was in 1980 and I will just clear it through here to see if I can find the appropriate document. Yes, the decision I think according to our records, was taken on February 26th, 1980 and the gentlemen, the names that you have just indicated as being Board members were the Board members at that time.

Mr. Furlong: The decision was taken then after the Committee reported to the legislature, the Procedural Affairs Committee, reported to the legislature in 1979.

Mr. Carsley: That is correct. Wait now, just a moment, now. No. Because I think that report, the Procedural Affairs report came out in the spring, I believe, perhaps in April of 1980, so this decision would have been taken.

Mr. Furlong: I can tell you it was tabled on December the 3rd, 1979.

Mr. Carsley: I am sorry. Our copy says 1980 on it, is



the one we have at the Food Terminal. So, it was then. This was after that report was tabled.

Mr. Furlong: So at the time that the decision was made not to move to Vaughan Township, this report was known by the members of your Board?

Mr. Carsley: I am sorry, I cannot say. I do not know. Obviously, the general manager and the Chairman knew what the other Board members knew. I honestly cannot say.

Mr. Furlong: Was there any one specific reason or were there a whole host of reasons as to why the decision to --

Mr. Carsley: Well, there were numerous reasons. I think I heard maybe possibly as many as five or six. I am maybe not the best person to perhaps answer that question. I will try if you want, but Joe, would you like to have some input there.

Mr. Melara: I know about as much as you do. At the time it was a Board decision. I think it had, if I am not mistaken, had to do with some leasing arrangements at the time, that the leases had to carry, the same lease had to carry into the new area. And they built the market and there was provisions for a tenure, I believe, a ten or fifteen per cent expansion to go into the market which some of the -- when it was in agreement and the last minute, I guess, the way it was written, apparently, it was told that any one leaseholder putting the dissenting vote would cancel the whole thing. But it had to be 100 per cent in agreement for a change. I think, and I was not really part of it, but I think that is what I was made to understand it so that is the way it had to work.

Mr. Furlong: Are you suggesting that the decision to stay at the existing location was made after consultation with all of the leaseholders and that their consent was required; is that your understanding?

Mr. Melara: I am not sure.

Mr. Carsley: I believe the questionnaire was sent out and the results show that on the -- from the written questionnaire show that there were three companies who, in fact, dissented.

Mr. Furlong: Do you have the names of those three companies?

Mr. Carsley: I just have to look at this. Would you just bear with me a moment?

Mr. Furlong: Sure.

Mr. Black: Mr. Chairman, I wonder if we might request copies of the material of the General Manager.

Mr. Carsley: Okay, yes. These are the minutes of that meeting in 1980, and there were three -- it was not a full response, but of the 14 people who did respond, three companies did not wish to move. Yes. The Italian Produce Company, Lamantia and Russell and Ontario Tree Fruits.

The Acting Chairman: Mr. Carsley, is it possible to get a copy of those minutes?

Mr. Carsley: Yes.

Mr. Bell: While you are continuing, I can give this out.

Mr. Carsley: There were, if I may add, some other reasons why people did not want to move. There was not a full response, but afterwards, I heard that a number of other tenants, I mean the three people are recorded as saying "no" to the move, but there were other tenants who did not want to move as well, who did not vote, and the -- one of the stories one hears is that a number of these people were older fellows who have been in the move from the market downtown and then they came out to the new location, and they just felt they did not want to go through the hassle of another move. There were two or three, I gather, like that.

And I think one of the other things was that the whole question of compensation came up at that time. You know, if this lease is to be changed or if it were to be given new leases, you are taking a perpetual lease away from us, what compensation are you going to give us now. And again, I am only going from what people have told me, and so, some of this just may be hearsay, but that became a problem, I gather, as well, because the Board, it is my understanding, that the Board was not prepared to give any compensation.

Mr. Furlong: So that there was consultation by the Board with the leaseholders at the time and basically --

Mr. Carsley: They elected not to move.

Mr. Furlong: They elected not to move.

Mr. Carsley: Yes.

Mr. Furlong: I would like to along to 1984.

Ms. Grier: Can I ask a supplementary of the minutes before you leave them?

The Acting Chairman: Yes.



Ms. Grier: Did any of the Board members declare a conflict of interest at that particular reason before a decision was made?

Mr. Carsley: No, not that I have seen in those minutes.

Ms. Grier: There is nothing noted in the minutes?

Mr. Carsley: No.

Ms. Grier: Thank you.

Mr. Furlong: I would like to move on to 1984 and again you can correct me if I am wrong, but it is my understanding that during that early 80's, you were losing money.

Mr. Carsley: Yes, we lost money, the last year, I guess was. We had an operating loss of \$250,000 and there had been losses for the four years proceeding that, so the total loss was getting close, I believe, to maybe five or 600,000 dollars.

Mr. Nicholas: That would be March '84. The term started in --

Mr. Carsley: The '84 was where the loss was. My apologies.

Mr. Furlong: I take it as a result of those loses, the Board was concerned and did they call a meeting of the leaseholders at that time?

Mr. Carsley: Well, the negotiating started, I guess, in at the end of 1983 and, you know, that certainly was recognized, that, you know, if the leaseholders were not prepared to change, as I call it, the determination for rent clause in their lease, then things would have become worse, because the way this old lease read was that for the next 30 years, the A and B unit tenants were only responsible for paying half the upkeep, half the expenses on the Food Terminal Building, while half of that, they had been paying their taxes up to that, because it was not a controlled expense.

So that would have meant instead of 250,000 a year, we probably would have started to lose about 400,000 a year. So, obviously something had to be done and it was recognized by the leaseholders themselves, that, you know, if the market was to survive, they had to agree to change the determination for rent clause and we had some fairly, I would say, protracted negotiations and if it had not been for our Vice-Chairman and we were dealing at one point with individual leaseholders.

And finally, Mr. Melara, our now Vice-Chairman got the leaseholders together to come together as a group, so we could make some headway in this area because we were not getting anywhere. So, the fact is that we had some lengthy negotiations and the leases, the final leases, were not signed until they took about a year and a half to get the last leaseholder on Board but the tenants did agree to pay the new rent starting on April 1st of 1984 even though they did not have a signed lease at that point.

Mr. Furlong: At the time that these negotiations were going on, had the Board made -- the Chairman referred to some representations that they have made to the minister, with some proposals with respect to subleases and some control over those subleases. Had that been done at that time?

Mr. Carsley: No, that is a more recent development.

Mr. Furlong: Had there been discussions with the Minister of Agriculture, at that time, with respect to the to the perpetual leases and the problem that that appeared to create?

Mr. Carsley: Well, we were not privy to any conversations and I talk of myself and my associate, Bruce Nicholas. We were not really privy to any conversations that our Chairman, at that point in time or anybody on the Board, may have had with the Ministry.

Mr. Furlong: Would it be fair to say at that time that you were -- you certainly were aware at that time of the recommendations of the Committee that studied you previously?

Mr. Carsley: Yes, sir, I was.

Mr. Furlong: Are you aware that one of the recommendations was that the section twelve of the Act be amended to take away the monopoly status?

Mr. Carsley: That is the Act. Yes, I was aware of that.

Mr. Furlong: You were aware of that. You were also aware of the recommendation with respect to terminating the leases in perpetuity.

Mr. Carsley: Yes. I am fully aware of everything in the Procedural Affairs Report.

Mr. Furlong: You would have been aware also that the Ministry would have had some concern, given this report, that they were also concerned, I take it, there were discussions going on. You do not know that?



Mr. Carsley: Well, I do not know for that. If the Ministry had wanted us to do something, then they should have come to us and nobody came to Bruce or I, as the management, to say anything about that. And when we got into negotiations, our Chairman at that time, said, look, we have got to get the thing on a proper financial footing. Just go out and do the best job you can in negotiating new leases and get the A and B unit leaseholders to pay their way and we did that and we think we did a damn good job because they did not have to change a damn thing and we personally went through, I would say, a year and a half of cajoling and, what should I say, being as patient as we could and we finally got everybody on Board.

So, you know, from our point of view, we think we did a damn good job and we are proud of the job we did because we got the market back on a proper financial basis again and we were able to start doing some of the things that needed to be done because we had the money to do it.

Mr. Furlong: We all have an opinion as to what kind of a job was done, but I have some concerns about the negotiations that went on at that time. It strikes me that knowing what you knew then and knowing that you were in a position that if the leaseholders did not agree to something, there was going to be a disaster may be too strong a word, but certainly you were going to a point where you were going to be losing a lot of money and somewhere along the line there was going to be a day of reckoning.

Mr. Carsley: Absolutely.

Mr. Furlong: Given that, and I have to assume that you would not be happy looking at it from the manager's point of view at 30 years leases in perpetuity. Like you are looking at 30 plus 30. I have got to assume that that is not something that you would want as a manager.

Mr. Carsley: Well, I mean, I could answer that this way. I could say and I am not trying to be a smart aleck, I could say, well, you know, heck we had our tenants. We did not have to go out and find new tenants. The place was going to be on a solid financial footing, you know, so perpetual leases could have been an advantage to, I should say, a corporation perhaps.

Mr. Furlong: I put it to you that in 1980, the fact that these leases were there in perpetuity created a problem which prevented you from moving. That was at least one of reasons.

Mr. Carsley: Yes.

Mr. Furlong: You now turn around in 1984 when you have

an opportunity to perhaps make some changes in this document and you turn around and continue that perpetuity on the same location. There is not even a provision in here. If you were to move, you are not covered. You would find yourself in a position where you are looked into that particular area without paying heavy compensation for the term of this lease.

Mr. Carsley: Well, I mean, we already had the advise of our legal counsel or the opinion of our legal counsel. We have no power to change the lease and I put it to you right now that if the Ministry wanted the lease exchanged at that point in time, then they should have advised the Board and the Board could have, in turn, advised management.

Mr. Furlong: I am a not disagreeing with you with what your counsel gave you. I think the advise is correct. I am simply suggesting to you that because you had a unique situation arise, that is you were losing money and were about to lose more, that there was going to be a day of reckoning, that it gave you a bargaining tool, quite aside from your contract, it gave you a bargaining tool to go to them because you did effect a change.

Mr. Carsley: That is right. I have a bargaining tool. You are right.

Mr. Furlong: I am suggesting to you and I am asking the question, why, given that you knew, all right, that you had to do something, given that you knew that they would have to agree to something or the day of reckoning would come, given that you had this report in 1980, indicating that there was some very serious concerns about the leases and perpetuity, given all of those things, I find it odd that you came out with this document. It seems to me that you were in a position to renegotiate more than you did. And I am wondering, my question I guess is, you know, why were you just satisfied to continue the status quo only to cover your operating costs?

Mr. Carsley: Well, I can tell you right now that we wanted the market to continue and we wanted it to get on a proper financial basis. As we have said, we had no power to change anything. Our instructions from our Chairman, at the time, were to go out and he was involved in the negotiations as well to a somewhat lesser extent, but he was involved in the negotiations and we were told by him that, go out and get the determination for rent clauses changed and forget about the perpetual issue, forget about the assignment issue. Those were our instructions.

Mr. Bell: Mr. Furlong, can I assist? This may be no more than speculation and I think perhaps the question might be put to others, not currently in this room, but the report in 1980 addresses the two main issues that you have tested



once, the section twelve issue and the perpetuity issue. The Committee's recommendations, and we concur in the recommendations, when they say neither of the two can be effected without legislative amendment.

If up to 1984, there has been no indication from the Ministry respecting those two issues ie. legislative amendment, that whomever made the decision on behalf of the Food Terminal Board back then, may rightly have concluded that there was not, that legislative amendments were not forthcoming and I do not want to repeat what we have said this morning, but for all the reasons given this morning, this Board lacks the legal authority to affect those changes unilaterally. I do not think that even this Procedural Affairs Committee acknowledged that issue.

Mr. Carsley: I have got a problem with that issue, Mr. Bell. I think hindsight --

Mr. Bell: Sir, your point probably in hindsight is a valid one, but there is a another member that is not at the table that changes the dynamics, somewhat, not to be, with respect, foisted on the shoulders of this Board, in respect of what in 1988 may appear to some to be not how you would have done it in terms of bargaining. You have got the third dynamic of the Minister and the Ministry and, as I say, Mr. Carsley is correct when I say that we are not privy to the exchange between the Ministry and the Board in respect of those issues.

Mr. Furlong: Well, I appreciate that, and hopefully, we will get the Ministry's position or at least what --

Mr. Bell: I am sure you will in time.

Mr. Furlong: I would like to perhaps, Mr. Bell, you would be best to answer this question, because I am certainly rusty in my interpretation of leases, but the clause to sublet or to assign, indicates that the leaseholder will not assign or sublet without consent and that consent will not be unreasonably withheld.

I guess what I would like to zero in on is unreasonably withheld. And I am wondering if a situation, which I assume is known to the Board, a situation where an individual who holds this lease, is getting two or three times the value of the lease, at least the value that he is paying to the Board, from a subtenant an or an assignee, whether that would be considered reasonable or unreasonable, given the fact that this property belongs to an agency of the crown. Crown moneys albeit you indicated \$2-million was what you got from the bild fund but it came from the crown. Your liability is protected by the crown, whether that, in essence, might be considered unreasonable, and would be a ground for you to say I am sorry, we are not approving that

sublet or that assignment of lease on the basis that it is a really a grab in an indirect sense on the public purse.

Mr. Bell: Well, given your question in the hypothetical, in respect of consideration being paid for the assignment of a lease, which is generally the sale of a business, with all is attended upon that. Given that there is a sale of something which includes the lease to a third party, for an amount of money in excess of what was initially paid for, the lease, the leasehold improvements that have been applied to the lease space at most, if not all of the tenants, incur annual leasehold improvements.

Factoring that all in, there is a sale for more than same, then no that would not be unreasonable withhold. If you want to give the hypothetical that if person A acquired the unit from tenant B in day one and sold it in day two for a significant profit, then that might be although that situation has never presented itself to the Board and from what Mr. Carsley indicated there morning, there have not been any quick flips and the number of assignments in recent history have been relatively few.

Can I answer it further this way and if you want to give it real focus to your predecessor Committee, are the three recommendations of the predecessor Committee or this Committee, and I presume and I have not checked, but I presume, through Mr. Arnott, that this report was received and adopted by the House, so given whatever legal weight that has, are those three recommendations sufficient reasonable grounds to permit the Ontario Food Terminal Board from withholding consent? Regrettably no. The law is while it tends to cover a fairly broad spectrum as to what is or what is not reasonable, it cannot be something that is not related to the lease and the relationship between the parties. I hope that assists.

Mr. Furlong: What about you have covered everything except the situation where you have a subtenant.

Mr. Bell: That is a sublease.

Mr. Furlong: A sublease. If you had a sublease, knowing that the sublease has all the terms and conditions of the head lease and the amount of money being paid is double the head lease so that the subtenant is paying for all those things you have mentioned.

Mr. Bell: Again, you have got to do something, what is the subtenant going to do, what is he paying for, et cetera. For example, if the head tenant has paid over the last five or six years, \$250,000 in leasehold improvements, it would seem to me that it is a reasonable request or a term of a sublease that he recovered those improvements from the proceeds, so in that case, no, it is not unreasonable.



Again, if you get to day one and day two flip situation, yes, you can see elements where withholding in that circumstance may be given circumstances appropriate.

Ms. Grier: Can I have a supplementary on that?

The Acting Chairman: Yes.

Ms. Grier: The 250,000 hypothetical leasehold improvements, given what we saw this morning, I mean you are talking about an office created in the upper part of one of the stalls as a leasehold improvement.

Mr. Bell: Well, I am not. The members of the Board and Mr. Carsley are certainly more knowledgeable to speak to specific leasehold improvements, but I understand it, there is a lot that goes into a leasehold improvement in respect of the stalls that quote unquote that meets the eye and, you know, I am aware of units, for example, where there has been over the last five or six years, in effect, a quarter of a million and it is not for leases. It has to do with maybe one of the members can just give me a list of the type of things that leasehold improvements are given.

Mr. Melara: There is elevating devices put in. There is refrigerations put in. There is rear dock enclosures put in. Dock plates that were basically not part of the terminal structure. And these additions, that most of the tenants have put on are without any problem, 250, 350, on a single unit. On a multiple unit, there is probably some multiple units, one in particular, that probably has 70 or 75 or up to \$100,000 a year, annually, these whole improvements within their operations.

Ms. Grier: And how many of those have changed hands over the last few years?

Mr. Melara: In the last ten years or something, I would say, I forget the number.

Mr. Carsley: The last 15 or so years, it is probably been five to eight that had leases exchange hands.

Ms. Grier: I see, and so, of the five sublessees that, I think you told us that now exist, are they all in units that have had significant leasehold improvements, such a air conditioning or elevators?

Mr. Melara: Certainly some of them. I would say some of them do. I am really not familiar with all of them, but I know certainly one or two of them have had sufficient improvements made on them.

Ms. Grier: I guess I ask is the one I saw this morning for which 18,000 has been asked did not have a air

conditioning for example. It may have had other improvements. It did not have refrigeration.

Mr. Melara: I am not familiar with which one.

Ms. Grier: Thank you. Sorry, I meant refrigeration.

The Acting Chairman: All right.

Mr. Furlong: Just a couple more questions. In your opening statement, Mr. Carsley, you indicated that should the legislature pass legislation, you be looking for that legislation to have some form of indemnity to protect the members of the Board in the event of any possible litigation as a result of these leases. Is that as a result of advise you received from counsel?

In the event that the Ontario Food Terminal Board began losing money, all right. Again, it is a hypothetical that you started losing money and you were unable to continue operation, are there any provisions? Has the Board any plans or discussions with respect to that possibility? In other words if the section twelve of the Act were repealed and somebody set up in competition to you, are you suggesting that even under those circumstances, you would want want some form of protection?

Mr. Collins: Are you referring to any specific part of the market or the whole market?

Mr. Furlong: The whole market.

Mr. Collins: Yes, under the warehouse leases for A and B, there is a protection built in in the lease to cost escalate or profit decreases and this will be adjusted within the leases of the A and B. So, I guess it is not applied to the Farmers' Market people.

Mr. Furlong: If I read it correctly now, I just want to understand. With the lease you now have, if the business were to decline, if, for example, somebody set up a competition and was able to do so and business declined so that you were not breaking even, you could go and increase the lease at least to keep your operating cost satisfied; is that correct? Is that a fair understanding of your lease?

Mr. Carsley: Yes.

Mr. Furlong: Thank you.

Mr. Bell: Sir, can I just add to that? The scenario that you put, would the Board be seeking some form of indemnity? I think the answer to that is yes because it would seem to me that the Board should be concerned and others would be interested to see what role the Board played



in the result which was an effective amendment to section twelve which permitted a competitor to set up within the same geographical area.

As you well know, sir, the duties of Boards are both in a fiduciary relationship and contractual through the lease and if the Board was seen to do anything that permitted that competitor to carry on, some people might well take the position that we are adversely affected by that, that the Board, in effect, caused that result or certainly was a contributor to it, so, I think that, yes, we would like some comfort.

Mr. Furlong: Let me just respond to that. It was my understanding this morning that you did not believe that section twelve created a monopoly.

Mr. Bell: It does not. Not as I understand a monopoly.

Mr. Furlong: Are you suggesting that maybe you and I do not understand monopoly. Are you suggesting that someone else could locate within that area.

Mr. Bell: If the Minister wants it, yes. Right now.

Mr. Furlong: Well, then that being the case, we would not have a problem.

Mr. Bell: You would not need to amend section twelve and the decision would be the decision of the government and the Ministers and it would not be a decision of the Board. And therefore if that step were taken and people did not people disagreed with that step, it would seem to me that the focus of concern would be fairly well-defined as with the government and the Ministry and you can do lots by legislation to mitigate, if you will, the effects of certain matters.

But, just for the record, there is a line of cases of speaking for Canada, leading with the Manitoba fisheries case, that says essentially that governments cannot by legislation take the property of a citizen by legislation or otherwise without compensation and the only way you get, as a government, relief from that obligation to compensate, is by express retroactive legislation. It is not impossible, but it requires very specific things and that is really what, in this area, is what our concern is.

Mr. Furlong: Thank you, Mr. Chairman.

The Acting Chairman: Mr. Black.

Mr. Black: Thank you, Mr. Chairman.

The Acting Chairman: I have, for the record, Mr. Black

and Mr. Lipsett, Mr. Mahoney, Mr. Velshi, Ms. Grier, Mr. Furlong and I would really love to ask some questions myself.

Ms. Marland: That is why I put my hand up, because you cut me off this morning and I knew you wanted to speak.

Mr. Black: Do I have the floor, Mr. Chairman? Are we going to continue this informal discussion.

The Acting Chairman: Go ahead.

Mr. Black: Do the existing leases relate only to present property?

Mr. Bell: Yes.

The Acting Chairman: So if, in fact, a new Terminal had been built in Vaughan Township, would those leases be null and void?

Mr. Carsley: No. I guess not. Unless, I guess that is the whole question I have to defer to Board members here, but the whole question of this business of compensation. If someone has a perpetual lease, he almost has an interest in the property. So if you go to break that lease, or to even to change, decrease its monetary value, it is my understanding that the courts take the position that some form of compensation is, shall we say, is valid.

Mr. Bell: Well, I think there is a fairly compelling argument to be made. I do not want to say anything that is going to put the Board or anybody else in the corner in respect to what somebody might claim, but there is a sufficient concern with the state of the law that would cause us to take that position. I think if the Food Terminal operation were to have been transferred from where it is to the new site, then these existing tenants would have the right to say, yes, you have just transferred the site of my operation. If the existing terminal were to remain in operation and the new one was to be a new, expanded operation, then those tenants would have remained within the business operation that exists.

Mr. Black: I guess the purpose of that question was to try to ascertain if the decision not to consider the expansion or the change, the relocation of Vaughan Township might have been a result of the fact that the leases that were occurring in existence would have been null and void had that change been made and that would have provided the opportunity for a renegotiation of a brand new lease arrangement and your answer is you do not believe that is the case.

Mr. Bell: It would it be the same as today,



unilaterally taking the position that those leases are terminated into taking steps to remove the tenants or to prevent the tenants from taking possession tomorrow of the property. It is, in effect, the same act in law, and the Food Terminal war would be at some significant risk at the hands of the tenants in litigation. You could not take a step to remove, if you will, the business operation from the tenants and transfer it somewhere else.

Mr. Black: Have you provided them with the opportunity to continue business under a different lease arrangement?

Mr. Bell: My view, subject to my partner, Righton, is that would be a matter of negotiation that ultimately the tenants would have the current lease and an ability to enforce that lease. They can take two steps. They could commence an action in damages or they could commence an action for a specific performance and seek an injunction in the courts to require the Terminal to remain where it is as a business operation or if it moves up somewhere else to bring them with it. As many ways as we have considered, there is not one available in law currently to have those leases terminated. Absent amending legislation with all of the protections built in for those that need to be protected.

Mr. Black: All right, let me pursue another line of questioning here. Have any of the current leaseholders expanded their space from what their original allocation was?

Mr. Carsley: Have expanded their space?

Mr. Black: Yes.

Mr. Carsley: Well, they have built on some back docks.

Mr. Black: Did any of the current leaseholders start with one unit of space and have since expanded it to two or three or four?

Mr. Carsley: Not that I can think of.

Mr. Nicholas: You are going back to day one.

Mr. Black: Yes.

Mr. Nicholas: I would assume probably they have. They have since day one. If the question was to go to day one, when we had original tenants, there is only probably less than six tenants or original tenants that were there in 1954 when the market opened. I think over that period of time, I am certain that there has been some tenants who have expanded their initial allocation of units.

Mr. Black: Let us assume that some of those tenants did expand their initial allocation during that period of time. Would there have been a waiting list of other people wanting to obtain a unit when they expanded and took over another unit? Would that have been possible and did it, in fact, happen?

Mr. Nicholas: If there is a waiting list now, there could have well been a waiting list back in 1954.

Mr. Carsley: In all likelihood, there was a waiting list.

Mr. Black: Let me be specific and I will give you an example. If I own or have a lease on one unit and for some reason, Mr. Furlong gives up his lease on the unit beside me, do I get first choice of that vacant unit or is it put on the market and anyone can come in and bid.

Mr. Carsley: It is put on the market and anyone can come in bid for it.

Mr. Black: How do we inform potential --

Mr. Carsley: We, as the Board, or the Board of Directors, who does not inform, we do not find out, usually until the deal has taken place and then they come to us or they come to the Board and ask for permission to assign. Then you get into that whole business of the Board cannot unreasonably withhold.

Mr. Black: So, I guess my concern is this: From where I am sitting, it appears like we are dealing here with very much a family affair and that it is possible under the current conditions to maintain the family affair. In other words, the current leaseholders have the right to assign their space. They have the right to sublease their space. It makes it almost impossible for any one of your 34 people who want to get in, to find a way into that building, short of paying their way in through either buying an assignment or paying a big price for a sublease; is that correct?

Mr. Carsley: That is correct, yes.

Mr. Black: Thank you.

Mr. Carsley: That is not a monopoly.

Mr. Black: I did not draw that conclusion.

Mr. Carsley: No. No, can I say something. I think that Mr. Melara might be able to clarify this, but certainly there are new people on that Terminal. It is not as so, if the original people there, sort of as a group, got together that you called the family and said, okay, we are not going



to let so and so come in sort of thing. I have never seen, at least, I have never seen any evidence of that and actually the one business that was -- that did change hands since I have been at the Food Terminal did, in fact, go to outside interests.

Mr. Black: Okay, fair enough.

The Acting Chairman: Excuse me, Mr. Black. Outside interests meaning someone that was not on the list or meaning someone that was on the list.

Mr. Carsley: I do not think they were on the list. I do not think they were. No, they were not.

The Acting Chairman: So that the people on the list were bypassed and it went to outside interests?

Mr. Carsley: Well, that is right. Because we cannot tell the tenant --

The Acting Chairman: No. I am not suggesting that you can. I am just trying to draw an analogy on how --

Mr. Carsley: I do not think these people were on the list. In fact, I can tell you they were not.

The Acting Chairman: Thank you. Mr. Black, go ahead.

Mr. Black: What is the purposes of maintaining the list?

Mr. Carsley: Well, if new units were ever built, then those people who were on the list would receive some type of an opportunity to have one of the new units. Do not forget that any new units that are built and the Minister has said this, go to new tenants and new tenants means anybody. A new tenant is somebody who is completely new. You cannot have an sort of an interest in an A or B unit lease at all.

Mr. Black: Let us change direction for a minute, if we may. You have talked about adding space and we assume now that with the approval of the Minister, the Board can undertake planning and probably will be undertaking planning in the immediate future to expand the space there. You have 34 potential tenants on a waiting list. I am interested in why you are only planning to build eight units.

Mr. Carsley: Because we only have a certain amount. We do not have enough space to build 34 units and I say we have 34 people on the list. I would suggest, Mr. Black, I am not trying to, you know, discriminate, here, but I would suggest that probably about the first 15 of those tenants are real bona fide tenants. The other people, I do not feel, and again this is my judgment, I do not feel would have the

financial capability when it came right down to putting the money up front to be able to make a business work at the Food Terminal. Of course that is my judgment and I am just saying it, you know.

Mr. Black: Let protrude out a little bit. If we then have 34 potential lessees, we have 15 to 20 of whom might be bona fide contenders in your judgment, why the decision to build only eight spaces again?

Mr. Carsley: Well, at this point in time, there is not a great deal of space left. And we are working with our architects. It could be we might be able to at a later date build, you know, some more units, in addition to the eight, but we are looking at the impact, et cetera, on the cold storage facility, this sort of thing at the present time, but we are not planning on expanding the cold storage facility right at the moment. So, you know, you do not want to get, say, 15 or 20 new tenants in there and not be able to provide the service for them. So, I think this is our impact study sort of show at this point in time, eight units is about all we can handle.

Mr. Black: I think can see where we are coming from. If we have these kinds of concerns and I think the general public who, in fact, are the owners of that facility in a perhaps indirect way, would share some of those concerns that you have a situation that is not a monopoly but has many of the characteristics of the monopoly. At least it is a very tightly controlled situation. The people who make the determination as to how many other competitors will be allowed in, sit on the Board and four of the seven members of the Board are in a position where there is a potential conflict of interest, at least in the minds of people from the outside looking in. But that might explain some of the concerns that members of this Committee are feeling. Does that concern the members of the Board at times?

Mr. Carsley: Well, I would have to say and I am only giving my opinion here that I would have to say that a serious mistake was made by not moving to the new location and I really feel that some of the tenants and I think that Joe would agree, that some of the tenants feel that, in fact, it was a serious mistake.

Mr. Black: What is the new location of the proposed location in Vaughan Township. So it was not in York or Peel?

Mr. Carsley: Yes, it was.

Mr. Black: Okay.

Mr. Collins: There has been a temporary type of expansion taking place over those years and most of you were



in those B units this morning. Initially those B units were really warehouse units. Those warehouse units were converted into actual sales units. So, I do not know in terms of square footage or total percentage of the selling units of A or what the B represents, but maybe somebody could put a 20 per cent figure on that or something like that. So, it really has been some expansion. You cannot say there has not been.

Mr. Black: Mr. Collins, in fairness, if I understood correctly, in walking around there this morning, some of those B units are, in fact, nothing more than storage units for people to hold leases on the A unit.

Mr. Carsley: Yes. That is the case with, I guess, Chiovitti Banana and, I believe, the Rite-Pak Group, but the others, basically, the other space, the unit space --

Mr. Black: How many units are there.

Mr. Carsley: There are 20 B units.

Mr. Black: If I understood correctly, at one point this morning, I look at five unit which were held by one person.

Mr. Carsley: That is correct, yes.

Mr. Black: So, five of the 20 then, were not available to any to competitor?

Mr. Carsley: That's correct, yes.

Mr. Black: Let me ask you this question. When the 20 B units were into place, how many of them were occupied by new tenants, new to the --

Mr. Carsley: Well, the B units were always there. I guess the people who had them started to use them as selling space.

Mr. Black: So in fact, there was no expansion in terms of more competition coming in. It simply provided more space for the existing tenants.

Mr. Collins: A couple of them. Two or three, I believe have come into selling units. Two or three.

Mr. Black: Was there any thought given by the Board at that time to make those units available to the 34 people on the waiting list, or the number that might have been there?

Mr. Carsley: Well, I think, the fact that they have become selling units took place would have taken place back in the late 60's to mid 70's type of thing.

Mr. Black: would there not have been a waiting list at that time?

Mr. Carsley: I think that there was, yes.

Mr. Black: I guess what I am having difficulty with is the fact that we have, and obviously we did not have concerns expressed at that time about perpetual leases, but here was an opportunity with expansion to the B units to open up the Food Terminal to new tenants and it would appear that that really was not, it did not take place.

Mr. Carsley: Well, it would have meant somehow acquiring those because, you know, basically, those B units were owned or leased by present tenants for storage purposes yes, basically.

Mr. Bell: Mr. Black, I am just reminded that the leases on the A and the B leases even under prior use were identical, so you still had the same issues of assignment and renewal, regardless of who has got them, whether the number of tenants was in the aggregate increased or remained the same, you still have what I, with respect, believe is the focal issue that this Committee is addressing, not the monopoly issue. Because you can amend section twelve and you have still got the renewal and the assignment issues to deal with and I think if you deal with the renewal and the assignment issues, in any appropriate way, section twelve becomes, with respect, I think irrelevant for your consideration.

Mr. Black: If we were to see the development of 8 new units in that facility this fall, I assume that the Board would not agree to 30-year perpetual leases, again?

Mr. Carsley: The Board has gone on record, sir, as indicating that they would be modern up-to-date pieces of perpetual feature, et cetera.

Mr. Black: I think that is all.

Mr. Chairman: Okay. Go ahead, he will wait for my question. I am somewhat confused by that answer, but go ahead Mr. Lipsett.

Mr. Lipsett: Thank you, Mr. Chairman. I think in the Chairman's open Mr. Collin's opening statement this morning, indicates on page 6 at the bottom that the Board recently agreed that some restriction be placed on the tenant's right to sublet over a longer period of time. To me, I interpret that to mean that the Board recognizes that improvements to the present situation are possibly needed; is that fair?

Mr. Collins: Yes, that is a fair question.



Mr. Lipsett: Recently, it says recently. How long ago did you sort of make that determination to make some movement?

Mr. Collins: During the summer of 1987.

Mr. Lipsett: Okay, I presume that would be a recommendation that was made by the Board in a Board meeting in the way of a motion or something like that.

Mr. Collins: Exactly.

Mr. Lipsett: What type of restrictions do you have planned? It says some restrictions. Must have come up with some type of concepts or objectives that you have in mind.

Mr. Collins: I will remind the Chairman about, and I am sure it is on the record, because I spoke to that this morning, but I underscore that we have not come up with firm recommendations and I use, for example, the possibility that subletting be restricted to a period of two years after which time the head leaseholder then would have to reenter the business on a full-time basis or otherwise dispose of that unit. That is it. I think that is exactly the words that I used this morning.

The Acting Chairman: That is the paper that you provided as a copy of what you were reading from this morning; is that correct?

Mr. Collins: No, I did not use that example in the paper, sir. Mr. Lipsett just read from that paper this morning. I am just answering his question with reference to the paragraph on page six.

Mr. Lipsett: How do you propose to implement that sort of a recommendation? What obstacles, or do you see that as easy to do or how do you -- what do you foresee the future of that recommendation?

Mr. Collins: The Board generally makes a policy wherever possible, on issues like this and the implementation of something that enters into the legal field, we would ask for counsel from our legal staff and then defer that to them that if they cannot answer it at this point.

Mr. Lipsett: Could I ask the counsel if that is a realistic goal.

Mr. Righton: Now, in the context of the existing leases, bearing in mind the terms of which the Committee is well familiar, it is either a matter of negotiating change or legislative changes, I think. I cannot put it any more simply or directly than that.

Mr. Lipsett: And so is that what is inferred by the second sentence where you are examining ways to implement the changes that you had hoped to make?

Mr. Collins: Yes. Mr. Bell.

Mr. Bell: Mr. Lipsett, if I can assist. There obviously has to be more dialogue between this Board and the Ministry. After all, the Minister was responsible for tabling in the house any the Bill amending the Act and as your predecessor Committee has indicated, you cannot effect that change without legislative amendment, because of the absence of the Board's authority at present, so, the house, that is done, the ultimately it is a decision of government, the Minister, but obviously, the Minister would, I think, in some extensive way, confer with the current members of the Board and management as to how best to do that in the circumstances.

I mean, after all, one thing that is a given here is that the Ontario Food Terminal is a viable and very successful entity in respect to wholesale produce, et cetera, and I am sure nobody wants to take the wheels off the machine, if you will, for whatever reason. We are not talking about that. We are talking about building and improving on what is today. And obviously, the Minister would be seeking advise and input from the Terminal members.

The Acting Chairman: I am somewhat confused by those answers on a continuing basis. I would have thought that and perhaps you can correct me if I am wrong in my assumption, but I would have thought that contained within the operating mandate of the Board there would be an opportunity for you to make positive constructive suggestions to the Ministry in terms of reviewing your overall operation and recommendations that you would make to Ministry staff to say we have worked with this, we find that this is not a workable solution and that we would suggest that the Minister look at A B and C as constructive suggestions on how you would operate. Is that not within your mandate?

Like, Mr. Bell, you have said a few times today, in reference to, and I am sorry to interject, Mr. Lipsett, but I am confused by the continuing response in that fashion. When the Board is constructed, it would lead me to believe that all other Boards and agencies that I am aware of have an opportunity to make recommendation or constructive suggestions within the mandate to the Minister responsible for those areas of how we can improve our system.

Mr. Bell: There is no question that that is within the mandate of this and any other Board. My remarks were directed to the issue of what should be in the future in the



context of the term of a sublease, as the example that the Chairman gave, how do you go about that requires the assistance, in fact, it requires the act of the Minister in tabling a bill in the house and what goes into the formulation of the Bill, would I suggest be a matter of a collaborative approach between the Board and the Minister. Of course, the Minister reserving the final decision as to its content.

The Acting Chairman: I appreciate that. The only point I am making is someone has to initiate the initial beginning and it seems to me, the most logical to initiate the first move would be the Board in its suggestion to the Ministry people.

Mr. Bell: Except, sir, that has already been done. That is already a matter of historic dialogue, not that historic, last year's dialogue between the Ministry and the Board. But, in general terms, you are absolutely right. This is no different Board Agency Commission than any other.

The Acting Chairman: Mr. Lipsett, continue.

Mr. Lipsett: To move to a different area, this morning when we toured the Food Terminal, I believe that we were shown that there is five areas of revenue. It is broken into five areas that are self-managed areas. Is that true, that are operated all on a break even basis or --

Mr. Carsley: Well, exactly nine cost centres.

Mr. Lipsett: Cost centres.

Mr. Carsley: We call them cost centres.

Mr. Lipsett: And each cost centre is run independently of the other. Every cost centre is managed on a cost centre basis.

Mr. Carsley: That is right.

Mr. Lipsett: Independent of the next.

Mr. Carsley: The idea is to try to make each cost centre break even with the exception of the roadway and gate cost centre which is the one where we get most of our, I was going to say profit, but I guess I should say surplus from and then that goes toward our capital expenditures along with our cash flow depreciation.

Mr. Lipsett: Now the A and B area is one cost centre?

Mr. Carsley: Yes, sir.

Mr. Lipsett: How do you determine, and I believe that

is part of your negotiations in the last time around to come up with a reflective square footage cost to reflect the cost centre that is going to break even or show a slight surplus.

Mr. Carsley: Yes.

Mr. Lipsett: How is that determined?

Mr. Carsley: You mean, how did it get into the lease?

Mr. Lipsett: How did you establish what a cost per square feet would be to make that cost centre a mill rate?

Mr. Carsley: We have, as I explained to somebody this morning, just take our labour, okay, salaries and benefits. That is allocated across all nine cost centres. It is based on where we spend our time. Each one of us, at the end of every week, fill out a labour allocation form. My time, for instance, last Tuesday, I spent three hours in the A and B unit cost centre. I put three hours down. The Farmers' Market, two hours, that type of they think. The labour is allocated that way.

Some of the allocations, and it is quite carefully spelled out in the lease, there are, I think, 18 different costs, different accounts, okay, and they are allocated across the nine cost centres and some of it, has some of it, for instance on things like water and things like that, some of it is metered. Sometime, we have to look at it it, you know, and it says right in the lease that management with use its judgment, its best judgment as to, you know, where the costs should be allocated. Because sometimes, particularly on some things, for instance, on electricity, et cetera, where it is not individually metered in some instance. You have to take an educated guess.

Mr. Lipsett: I guess where my question is leading, do you feel that your educated guess on that area is high enough, when you indeed look at what some subleasees are prepared to pay for for that space and well, still be profitable.

Mr. Carsley: That is an interesting question. I suppose if we were a private corporation, you would be charging what the market would bear. Obviously we do not want to do that.

Mr. Black: They are in subleases.

Mr. Carsley: Okay, I would suggest that that maybe the case, but I am just saying that the Food Terminal Board as such, figures its grants out that way. And it is work out, we think, very well. Our audit is done by the provincial auditor and that A and B unit cost centre is audited again by an independent auditor to look after us.



Mr. Lipsett: So, you are satisfied that, say the cost centre of some area might not be out of line on the high side that has allowed this area to be a cost centre that does not reflect the two true market value of that square footage. Well, if you have nine areas, there is a percentage of the total revenue comes from each of the nine areas.

Mr. Carsley: Yes, right.

Mr. Lipsett: I guess that is where I question is does that particular area, some of the others could maybe be looked after but theirs could be actually lowered little bit and this area raised and still reflect true cost.

Mr. Carsley: Well, I think we do. I really think we do a very good job of allocating costs and if you want to come and see some day when we are setting up our budget and that sort of thing and how we do it, and come in and look at the final audit and see how it is gone over, we honestly feel that those expenses in those particular cost centres are as well allocated as they possibly could be. And I think that, you know, you can ask the provincial auditor. I think that they would indicate that they agree.

Mr. Lipsett: One last question.

Mr. Carsley: Yes.

Mr. Lipsett: Where is it?

Mr. Carsley: We rent it. The biggest part is to the very south of the Terminal running along the Queen Elizabeth Way. I do not know if you noticed those power lines that run through from Oshawa Wholesale and across our property at the back. You may not have noticed them. That is the Hydro area, and, Bruce, how many acres do we rent from them? I cannot remember. 1.26 on the free parking and about three and a half acres and we would, you know, we want to use that, we would like to, if new units are built, it is imperative that we be allowed to use that hydro land not to build on but use it as a right-of-way and they have we have had initially, we have had some problems with Hydro, they were not being too cooperative, but I have a meeting with Hydro, on Thursday and with our architect, and we have now got the fellow who is head of engineering and he seems to be more cooperative for whatever reason, so we think we will be able to to strike a deal with Hydro.

Mr. Lipsett: Thank you.

The Acting Chairman: Mr. Velshi. Sorry, Mr. Mahoney. Sorry, Mr. Mahoney goes first.

Mr. Mahoney: Thank you. Mr. Chairman, could I just go back little bit and I will try to be brief. In 1954, this establishment was created and was built and your statement, the opening statement of you, Mr. Chairman, says that it was built with the proceeds from the \$5-million bond issue. Is that issued by the provincial government at that time?

Mr. Carsley: I am wondering, if we could, if we could defer to our secretary-treasurer. He is an expert on the bond issue and how it came about and how it was disposed of.

Mr. Nicholas: Originally when the property was built, it was a bank loan with the Royal Bank. Subsequent to that, the Food Terminal Board itself issued five \$1-million bond. It was picked up by the Hydro Pension Fund in trust, paid three and a half per cent and matured in 1984.

Mr. Mahoney: Was it guaranteed by the government?

Mr. Nicholas: It was guaranteed by the Province.

Mr. Mahoney: By the Provincial government, okay. The purpose of it at the time was, and I again read from your opening statement to bring wholesalers and growers together to serve the produce needs of the Ontario Retail Trade as efficiently as possible and I guess the offshoot of that would be to serve the consumer as efficiently and as economically as possible. Would that be a fair statement?

Mr. Carsley: Sure. Yes.

Mr. Mahoney: The mandate that our Chairman was referring to at the Board, is that something that is in writing, that this Committee could see the actual mandate of the Board, the rules responsibilities, that type of thing?

Mr. Carsley: Well, now, we do have our own. There is something in the Act, of course, but further to that, I think in your package that Mr. Eichmanis did, there is a list of our mandate and objectives to sort of speak, so they are in writing.

Mr. Mahoney: Where are they?

Mr. Carsley: I think they are in -- are they not in your briefing report somewhere.

Mr. Mahoney: I am a quick study, but not quite that quick to read from that. If I have them in writing, I will look a look at them. Thanks. Mr. Carsley, you said that the big mistake that was made in our opinion was not going ahead with the expansion, with the move, I guess. And that decision came about in 1980, when, I guess, according to these minutes, the government of the day was reluctant to guarantee the increase in the bank loan that was required



without voluntary support for a move by the tenants, so we have got a situation where I presume there were 28 tenants involved at that time, as well, and have been from day one. It is always been that number.

Mr. Carsley: It is difficult for me to say that. Bruce, what would you say, 28 tenants from day one, or thereabouts?

Mr. Nicholas: Around that?

Mr. Carsley: Thereabouts.

Mr. Mahoney: Give or take?

Mr. Carsley: Yes.

Mr. Mahoney: So we have these tenants who are in place and the government of the day was reluctant to effect a move to a more modern facility without them agreeing voluntarily. There was no legal requirement or was there a legal requirement. Mr. Bell.

Mr. Bell: In terms of relocation, no.

Mr. Mahoney: They can simply transfer those leases and, I mean, did they have the authority to close down the operation without facing lawsuits?

Mr. Bell: Well, no, because, as I said before, Mr. Furlong, that is no different than saying this afternoon to all the tenants, we are unilaterally terminating the leases, you are out. If you relocate a rough analogy perhaps in succession rights in labour --

Mr. Mahoney: Except that you would be offering them a reasonable alternative and a brand new facility, et cetera, et cetera, presumably.

Mr. Bell: Yes, but you can do that, but their recourse is your obligation owner under this lease is to provide me with a facility to carry on business. And if you do not offer it to me on the Queensway, then you have got to offer it to me on the same terms and conditions.

Mr. Mahoney: But they did not even get to that point. They simply got to the point through a questionnaire that maybe we should have had George Drew here to bang some heads, I don't know, but they simply got to it on a questionnaire, that said would you like to move or would not you and based on some alleged feelings that they did not want the hassle of moving, three said no. I wonder if perhaps it was rather than the hassle of moving more in their interests of staying put, and their self interest of staying put into what could be legally perhaps not described

as a monopoly can, but clearly in real times be described as monopolistic in nature. And, you know, I am really astounded that a decision as major as that would be put on the back burner as a result of three people saying I do not want to move.

Mr. Carsley: Mr. Nicholas was working for the Board at that time and he, perhaps has a little more knowledge of what did happen, although he was not at the meeting.

The Acting Chairman: I think it is fair to say that you received minutes of the meeting and that was the final question. The property was purchased in the 60s, early '62.

Mr. Mahoney: The Vaughan property.

Mr. Nicholas: The Vaughan property was held by the Board for at least ten years, eight to ten years, so there was ongoing, can we move, et cetera and there were many meetings. That was just the final meeting and the final question, because the value of the loan, the value of the property was starting to be less than the value of the loan and it was a point of the guarantees, as you have mentioned, so that was the final one. I mean there was many questions and meetings and Mr. Melara can attest to that.

Mr. Mahoney: But. I guess it is safe to say that if the minutes here indicate that three people said no and you have got the result of the survey which you admit was incomplete, the three people said no, had all fourteen said yes, you would have proceeded to get a commitment from the balance of the fourteen tenants there. Presumably, what I am taking out of this is that if the government decided not to go ahead with this, because of three people not wanting to go, the other, they would have gone ahead if there was concurrence.

Mr. Nicholas: I think it is fair to say and I think it says it in those minutes that three said no and thirteen did not answer.

Mr. Mahoney: That is what I will saying. Had you got an agreement from everybody to move, presumably, we would have moved.

Mr. Carsley: Yes.

Mr. Mahoney: So what we are really saying here is that the tail is wagging the dog. We have got the tenants here who are being told unless you voluntarily agree to move, we are a not going to move and by Mr. Carsley's own admission, that was the mistake.

Mr. Carsley: That is my personal opinion.



Mr. Mahoney: Well, I would agree with you. I wonder if it was compounded, Mr. Bell, I will let you response. I wonder if it was compounded, however, by following through and signing a brand new 30-year leases. One mistake, then get compounded with a second mistake.

Mr. Bell: Well, Mr. Mahoney, through you, Mr. Chairman, if I might assist. The minute that you have is, with respect, a snapshot of a decision given the day with a reference to a questionnaire. I can tell you, Mr. Righton can perhaps with with more particularity, that the tenants retain legal counsel. Mr. Alan Eagleson, for example, and there were three years of discussion between the tenants, as represented by legal counsel and the Food Terminal, and while the questionnaire is enlightening, we can tell you what the message was through legal counsel. A move, we will consider it but we are not monkeying with the terms of the lease and if your analogy to the tail and the dog is tenants and the Food Terminal and again with benefit of 1988 hindsight, you make a valid, you make a fair point. In terms of compounding with respect, sir, no, because what do you do? In 1983, '84, when the leases, when your given notices of renewal what do you do, when you have got the lawyers --

Mr. Mahoney: Do you want me to answer that?

Mr. Bell: Yes. Yes, with respect to your position, sir, as a Food Terminal Board, when you have got lawyers telling you that you have a lease you are bound to without fear of some significant legal dollar implications.

Mr. Mahoney: I guess, what, and in fairness, Mr. Bell, I agree with your hindsight is perfect science, and looking at the snapshots is can perhaps be misleading not having been involved in negotiations, but it seems to me, and I think that many other members of this Committee, it seems to me that the if we accept the mandate of the Board that was described by you in response to the Chairman's question, the job should have been to go to the Ministry and say we do not think we should be renewing these leases on this term. We think we should be, at least, phasing them out as they come up for renewal. We should be reducing the term, we should be looking very seriously at the recommendations of our predecessor Committee that came out in the 1979, 1980 report. Instead, I am lead to believe that there was tremendous cajoling and I think that was the word you used.

Mr. Carsley: Yes, it is.

Mr. Mahoney: And I do not know why you would have to cajole anyone to sign one of these leases. You would have to be a fool not to sign it. Well, you really would. I wonder if, and I want to make it clear, Mr. Chairman, that I think that these questions that are being asked of the Board

by members of this Committee, by the very nature of this problem must be tough and we must ask the questions in a tough way, because I think we have to review this situation very seriously. If the Board's mandate, let me move to the Chairman, if I might, Mr. Collins, if the Board's mandate is clearly defined here and I have not had a chance to go through it, there seems to be, in answer to a number of questions, a feeling that there is a reluctance or a lack of authority on the part of the Board to to implement certain recommendations, the three that you made, that you talked about this morning that we leave the assigning clause the same, that we put certain restrictions on the leases and reduce the term of the sublease and that kind of thing, do you want the authority, as a Board, to actually implement things like that, or do you think that that more appropriately belongs at the Ministry?

Mr. Collins: You are asking me the Board policy is as stated, that is Board policy.

Mr. Mahoney: Let me put it very simply. If you, as a Board, sat down and decided that there is some people getting ripped off here, there is \$60,000 a year in nothing more than coupon clipping going out to some person who owns a head lease. They bought or leased 17 or 18 years ago and he is subletting it out and has never even been in the premises or on it, sold a head of lettuce or had anything whatsoever to go do with the business and he is collecting 60 grand a year. To me, you do not have to be a genius to realize there is a bit of a problem there, particularly when it pertains to a business that is being run on government property.

Mr. Collins: Well, Mr. Chairman, I believe I have answered that question several times and it is on the record our Board does not support the continuing of subletting. It should be controlled and that was our recommendation to the Ministry. And I do not know why we have to plow that field again. It has been mentioned many times, unless I am missing the point of your question, sir.

Mr. Mahoney: Well, I guess it is not a matter of plowing that field again. I guess I want to make sure that I understand, and I think you said it more clearly just now than I heard it and if I am wrong, I apologize, but very clearly, if the Board is saying, I asked this morning if the Board is saying by resolution that we want this to change, if that is what are saying as a Board, then I am happy with that answer.

Mr. Collins: That is what we have and we have the minutes to prove it.

Mr. Mahoney: Going on, maybe Mr. Bell could help me with this. The clause, item K on page nine is really more



of a restrictive clause.

Mr. Bell: Is this on the lease, sir.

Mr. Mahoney: Yes. It is more of a restrictive clause that the tenant will not assign or sublet without leave. I am sure that you probably agree statements like which leave shall not be unreasonably withheld have made many a lawyer wealthy over the years to trying to determine what that means. As a restrictive clause, does it not say that you cannot do this, you know, without our permission and we have a right, I mean, can you not interrupt it to say that by saying you cannot do it, we the Board then have a right to uphold it, not unreasonably.

Mr. Bell: In fact, it is the reverse.

Mr. Mahoney: Is it?

Mr. Bell: The law, the principles involving restrictive clauses covenants, exculpatory clauses, things that tend to give one party the ability to restrict matters are interpreted strictly as against the party attempting to rely on it, which is why the law, as to what is reasonable withholding, tends to be relatively narrow and in my discussion with Mr. Furlong earlier, is if you put the question specifically with reference to the three recommendations of your predecessor or to the hypotheticals we were examining, on the present state of the law, it does not come with the ambit of reasonable withholding, whether it be ironic or not, it is irrelevant. It is the reverse. It is against the Board and in favour of the tenant and if you read these decisions, the courts talk about free marketplace, business practices, et cetera.

Mr. Mahoney: Okay. Just one final question. The Board has recommended that the term of the sublet be reduced. I you used the term of two years but you had not defined that.

Mr. Bell: Well, two years was given as an example of how it could be done.

Mr. Mahoney: What I did not hear is what would happen then. You subletted for two years, as an example. What would happen then? Does it revert to the Board, to then go an release as opposed to sublet?

Mr. Bell: No, the sublet, be reminded of Mr. Righton's review, if you will, of the difference between the assignment and a sublease. An assignment is the whole ball of wax. The sublease is something less than the whole ball of wax up to everything minus a day. At the end of the two years, the tenant, the subtenant either vacates, or he enters into the negotiations with the head lease tenants.

Mr. Mahoney: I am sorry.

Mr. Bell: The sublease.

Mr. Mahoney: I am talking about the head lease tenant. The head lease tenant can go and and sublease or if this were to be adopted as a recommendation, could go out in sublease the property for two years.

Mr. Bell: Say for two years.

Mr. Mahoney: So, I move in and I set up my produce shop for two years, and then after two years, I am given notice to vacate, and the head lease tenants takes it over again. What does he do then?

Mr. Carsley: He either would have to sell it, sell the premises or go back into the business himself. Well, that was my understanding, or operate the business themselves.

Mr. Nicholas: one of the examples --

Mr. Mahoney: What if he did not operate the business itself. Would the Board take over the property?

Mr. Carsley: Well, we have no right to do that, but this is something that all has to be worked out.

Mr. Mahoney: But a recommendation to reduce the lease without a further step, seems rather toothless.

Mr. Carsley: I agree at this point.

Mr. Collins: It has not worked out.

Mr. Mahoney: Sorry.

Mr. Collins: That is the point. It has not been worked out in all the details. We are throwing this out as an example. There may be far better arrangements. For example, it could be used. That is the only one I can give you at the present time.

Mr. Nicholas: If I can give you an example. As examples, the Board discussed at that particular time, some of the tenants, for example, one of the tenants was in the watermelon business. That business, at one time, did not exist in the winter months. Therefore, he subletted to someone else and then came back in business when watermelons came in season. There was really nothing wrong that. That was an ongoing by. That is one example. A lot of the tenants out there are owner operators. Mr. Melara's an example. If anything ever happened to Mr. Melara or his brother and he was hung up for a year and a half in a hospital, then he should have the right to make sure his



business keeps going until he gets back on his feet, and that was the example we used just as a layman's terms and if that would work and it could go into the lease, bearing in mind any changes to the lease and all the implications, then that is what the Board was thinking of. Just to help, the situations like that.

Mr. Mahoney: So it does not really address the situation of the paper landlord. The coupon clipper, it does not address that at all.

Mr. Nicholas: No, but it would put a nix on someone being a subtenant for ten years type of situation, or 29 years or whatever the lease would be to the term.

Mr. Mahoney: Sorry, Mr. Chairman, to take so much time.

The Acting Chairman: It is all right.

Mr. Mahoney: You would put the nix on someone to be the subtenant. The subtenant is not the problem. The paper landlord is the problem.

Mr. Nicholas: The nix is the subtenant or the lesee, the head lesee.

Mr. Bell: It will creates a dynamic. I mean, two years may not, after further study, may not be the best term, because who are you going to convince to set up an operation on a two-year horizon. Seven years may be a good term, because it may very well attract people who would have a seven-year horizon and also, if you look at the business community, a lot of subleases are renegotiated at the end of the term for another term.

So, it gives you a new dynamic. You know, if you look at the totality of the assignments over the history of the Terminal in relative terms, it has not been large. I cannot give you the statistics on subleasing, but those statistics would not be meaningful, because you are not talking about a short-term. If short terms are imposed, then you get another dynamic. It is almost like expanding. It has the potential of expanding the physical facility.

Mr. Mahoney: I guess the alternative is that since it is, in essence, a government sponsored facility, at the very least, the bottom line of the thing, perhaps in today's terms and maybe not in 1946 or '54, but in today's terms should be that if you give up the lease, you give up the lease, because it seems to me, the value in this business, is being falsely created in the lease by allowing a person to have a head lease for 30 years, locked in and just simply arbitrarily go out and find someone to pay huge exorbitant rents.

It is not an acceptable situation, Mr. Chairman. I do not know where this Committee can force it, not being a member of this Committee, but I hope we are going to pursue this matter very diligently.

The Acting Chairman: I am sure, we will, Mr. Mahoney. Mr. Velshi.

Mr. Velshi: Just a question first. Will there any assignments of subleases before the Board now for consideration?

Mr. Carsley: No.

Mr. Velshi: Are you anticipating anything, any talks about the meetings coming up?

Mr. Carsley: We have, you know, the rumour mill at the market, as you may have guessed, is a very active thing,, so, you know, I have not heard anything lately, but it is a very active rumour mill, and about half, about three quarters of thing you can discount.

Mr. Velshi: Another question here. You have the Oshawa group that owns five or six units there. The Oshawa group.

Mr. Carsley: Yes, Oshawa group.

Mr. Velshi: Hypothetically, if they are to take over all 28 units, which they can well afford to do, they have the best deal going in this country, right. They would be paying no land rental at all, ever. With the Board looking after their interests, cleaning up the place for them and making sure that you run a break even situation, am I correct, hypothetically, that could happen; is that right?

Mr. Carsley: Well, I am not familiar with all the laws in that regard, but I would have to think that the federal government with its new so-called New Competition Act would have something to say about that.

Mr. Velshi: Okay, because I do not know. I am not too sure whether this whole Ontario Food Terminal concept was meant for people like the Oshawa Group. It may be people like Mr. Melara, you know, the individual farmer or the dealer, but I am not too sure it is for conglomerates here. And I suspect that this is what is happening. I am not too sure if the Oshawa Group will be enough to carry the Food Terminal around, but I suspect it is after. The members seen a good deal.

Any way, I will not comment on the legality, of it, but my mind, Mr. Chairman, grapples with the Board's interests. Is it for the taxpayer that it is working or is it for the businessman, the tenant or for the Ontario taxpayer? I am



not to offer their own interest. Their own interest is obviously incestuous. So, that comes into mind if I they think automatically. If they are looking at the interest of the businessmen there, the tenant, and they feel that the tenant should have the protection of a seven-year lease with a seven-year option, that makes a lot of sense. But against that, I compare this unit with Ontario Housing that affordable housing that the government pays for, affordable housing for those who cannot afford it, for the purpose, for the service, to the community at large.

Now, when a tenant in Ontario Housing leaves, he does not have the right to charge key money and sublet and make a fortune out of something that the government has provided as a service to the needy. Yet, we have a situation here where the tenants are now taking advantage of a situation and taking key money and in huge sums. Now, I am questioning the morality of this whole thing and the confidence of the public in a Board and in an organization like this. I personally feel, I need more information on this. I need to talk to the previous Board members, perhaps some of the other tenants I think were involving here.

Another question I would like to ask is in the event of an addition of further units, what type if lease arrangements would be entered into. Now you have answered the one question that it obviously would not be the same as the existing leases. Fine. But, would you be unconsidering rent get to market value, so that the question of the good will value, which I am talking about, which the tenants are now making, the head lesees are making would be advertised into the leases so that the Board now makes it, or are you going to say that we are not concerned with that and the head lessee can keep on making his money. Instead of once every 30 years, he can make it every two years, which does not solve the problem.

I think in any new leases, it is going to have to be that there are no more free rides on the situation. Now, the other thing I am grappling with is that for the old tenants, when there was a short fall, when there were losses, the Board went to them and said we have a problem to solve. We are showing a loss. There is a deficit and we need to make up for it. And you did make up, which I think is good, because the tenants could have said, no, we were not interested. We have got our leases and that is your problem. The fact that you did manage to get that much out of them is good.

But at that point, you could have talked a little more and said there is land value here attached and it is prime land here. Somebody has got to pay for it. If that land belonged to me, I would be charging a hefty rental for that and each year I will be increasing it as a landlord. We are not doing that. I do not think the Board should go back to

tenants in that view. Do you really want to use the big gun and say legislate for the sake of 28 tenants.

The Acting Chairman: Mr. Velshi, can we try to get some answers in for some of these questions?

Mr. Velshi: Well, okay, the question is would you not be able to go back to the Board and say, we have a problem. Do you want the Legislature to enact legislation for the sake of you 28 guys. That is big guns we are talking about here. Why are you not able to to do that? Sure, they have got leases and they can say, go to hell. But, can you not wield that influence?

Mr. Carsley: Well, I suppose, sir, we could try. I mean that is certainly true. Whether we would be successful or not, I do not know. I mean the probabilities are that we would, so then we would to, if changes were to be made, then we would have to fall back on the government to pass legislation.

Mr. Velshi: Mr. Chairman, I find it difficult that we would have to act a law for 28 people. I just find it very difficult to understand. But I think I will just rest here. Thank you.

The Acting Chairman: Thank you, Mr. Velshi. I am sure you expressed some of the concerns that we all have in that relationship. I have three more speakers on the list at this time and it is Ms. Grier, Mr. Runciman and Mr. Farnan. However, we have reached 4:00 o'clock as well. Do you wish to pursue the line of questioning this evening or do you wish to reconvene tomorrow morning? What is your pleasure? Do you want to go to 4:30 and if the line of questioning is, and I also have a number of questions myself. I should warn you. Do you want to go for 4:30 and if we are not close, then we can reconvene tomorrow morning. Would that be all right, with you, gentlemen?

Mr. Collins: I have a commitment tonight, Mr. Chairman. How long would you expect the line of questioning to go on?

The Acting Chairman: I would expect we would not go past 4:30. If that be the case and the line of questioning is not done, we would have to reconvene tomorrow morning. I expect with the number of questioners, along with the number of questions I have myself, that we will be reconvening tomorrow morning in any event.

Mr. Black: If that is true, Mr. Chairman, I think we should adjourn today and reconvene tomorrow.

Mr. Furlong: Within this time frame, I think we should adjourn to tomorrow morning and I do believe that it is going to be beyond that.



The Acting Chairman: Then having drawn some impartial consensus, I would suggest that we adjourn now and we would reconvene tomorrow morning at 10:00. Thank you very much.

The committee adjourned at 4:00 p.m.





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Publications

STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO FOOD TERMINAL BOARD

WEDNESDAY, MARCH 30, 1988



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Breaugh

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Miss Martel

Mahoney, Steven W. (Mississauga West L) for Mr. South

Marland, Margaret (Mississauga South PC) for Mr. Jackson

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Food Terminal Board:

Collins, Allan, Chairman

Melara, Joseph, Vice-Chairman

Carsley, Bill, General Manager

Nicholas, I. Bruce, Secretary-Treasurer

Righton, Rupert F., Legal Counsel; with Shibley, Righton and McCutcheon

Bell, John P. G., Legal Counsel; with Shibley, Righton and McCutcheon



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, March 30, 1988

The Committee resumed at 10:05 a.m. in room 228.

Mr. Chairman: We will continue where we left off yesterday. I understand you had a very lively debate and a lot of answers to a lot of important questions. We would like to proceed this morning along the same lines. I am open now for somebody that has some questions that they wanted to ask our delegation.

Mr. Dietsch?

Mr. Dietsch: Thank you, Mr. Chairman. I have a number of questions and I would like to perhaps just start off at refreshing my memory, if you would, about the makeup of the Board and the people that sit on the Board.

My understanding was that there were no buyers that were on the Board, and perhaps you could refresh if there are buyers or just exactly the makeup of the Board content.

Mr. Carsley: Yes. Our board does have a buyer on it, Charles Coppa, of Highland Farms, and he is one of our new directors just appointed. Our Vice Chairman, of course, is Mr. Melara, our Chairman, Allan Collins. Then we have -- Our other new board member is Grace Dekker, who I think you met in the farmers market yesterday, and she is a grower.

Then we have Wayne Giles, who is a wholesaler, who is the General Manager of a company called "Food Services of Canada." I think his resume is included in the -- his brief resume is included in the research report.

And we have another tenant in the farmers market by the name of John Lum as a director. We have a director who is not directly involved in the market by the name of Keith Collver, whose is the General Manager of the Norfolk Future Growers' Cooperative.

Mr. Dietsch: So are there people from outside the marketplace itself? The makeup of the Board is made up of people outside the market proper?

Mr. Carsley: Some.

Mr. Dietsch: So you have people from the buying community?

Mr. Carsley: Yes.

Mr. Dietsch: You have people from the warehousing community that are sellers?

Mr. Carsley: Right; right.

Mr. Dietsch: And you have you people that are outside the market?

Mr. Carsley: Yes; right.

Mr. Dietsch: And the ratio of people outside the market in relationship to from those from inside?

Mr. Carsley: Well, roughly, I guess one would say a third.

Mr. Dietsch: One-third from outside?

Mr. Carsley: Yes.

Mr. Dietsch: And two-thirds from inside?

Mr. Carsley: Right.

Mr. Dietsch: How often does the Board meet?

Mr. Carsley: Last year I think -- It is in the research report, but last year I believe the Board met nine times.

Mr. Dietsch: Do you have a consistent pattern of meeting every Monday of every month or --

Mr. Carsley: It is usually on a Wednesday, and it is at noon on a Wednesday usually.

Mr. Dietsch: Once a month?

Mr. Carsley: Not necessarily. Whenever it is required, I guess. Normally the Board -- Mr. Chairman I am --

Mr. Collins: At least four times a year. It's quarterly, but at least four.

Mr. Carsley: Yes.

Mr. Dietsch: Anyone that uses the facility, how do they express any concern they have with the Board? Do you have a format set up where if I was a grower using the farmers market outside or one of the A and B stalls, do you have a format where I could express either satisfaction or dissatisfaction with the system?

Mr. Carsley: Normally that is done through letter. I mean, we say if you have something you want management to bring before the Board, put it in the form of a letter and



we will bring it to the Board.

Mr. Dietsch: Do you poll --

Mr. Carsley: I beg your pardon?

Mr. Dietsch: Do you ever poll your people outside to find out what concerns they have?

Mr. Carsley: Yes. We do send out questionnaires.

Mr. Dietsch: How often do you that?

Mr. Carsley: Well, it depends. Usually it is done when there is a particular issue and we also meet -- there is a farmers market -- they have an association and we meet with them occasionally, as well. In fact, they came into see the Board last year, did they not? the representative from the Farmers Market Association?

Mr. Dietsch: Have you got a long-range plan as to the development, if you will, of the market?

Mr. Carsley: Yes, we do. Let's put it this way: In our memorandum of agreement, in our new memorandum of agreement, which I guess we have not got signed -- or we have not got it back yet, in any way case, but it has a provision for a long-range plan in it.

Now, we have, you know, numbers in terms of what is required in terms of capital expenditures, et cetera, over the course of the next five years. We also have a forecast of what we think the tonnage is going to be in the market for the next five years, but we don't have any -- we do not have a financial long-range plan as such, but we will have.

Mr. Dietsch: Do you have a facility long-range plan?

Mr. Carsley: Yes; yes.

Mr. Dietsch: Did you make that up yourself or was there a professional that came in to look at the --

Mr. Carsley: We do get assistance from our architects -- quite a lot of assistance, actually. So it is a bit of both, some input from them and Bruce and I and our Operations Manager, Tom Chowns, put it together -- gather the facts and put it together.

Mr. Dietsch: So what are the long-range plans for the market?

Mr. Carsley: I am sorry I do not have it with me right here now, but in terms of capital expenditures, there is a considerable amount to be done in refurbishing the market

still. We are going to need a new roof, we need a new heating system -- that type of thing. And if you want, I can provide that information to you; I do not have it in detail right with me here.

Mr. Nicholas: I guess you could also say that the Board has historically been looking at expansion, be it at the new property, for a number of years since we held the land in bond, the bill, and then when the Vaughan land was sold, we have had any number of up to A, B, C, D, plans to expand within the market at its present site on the Queensway.

We have had two phases of redevelopment: one, the expansion of the farmers market, the deck, the restaurant buildings, the retaining walls to expand the site; the second one is, as Bill mentioned yesterday, the renovation of cold storage and the improvement of the STL unit warehouse people in the basement. And the third one is the new units.

Mr. Chairman: Mr. Black has a supplementary on that.

Mr. Dietsch: Okay.

Mr. Black: Has the Board given any consideration to the provision of another Ontario Food Terminal at a location say on the eastern side of Metro Toronto? Has this possibility been examined at any time as a way, first of all, of providing better service to eastern Ontario, making it more accessible to the people in that area, but also as a way of resolving the problem of a long list of potential suiters who would like to be given a chance to go to the alter?

Mr. Carsley: I think I am correct in saying that no, that has not been examined; at least since I have been in the food terminal, that has not been examined.

Mr. Black: Would that have any potential --

Mr. Bell: Mr. Black, I think --

Mr. Black: Sorry.

Mr. Bell: Mr. Black, I think just to refresh briefly from yesterday, one has to look at the geographic location at defined by Section 12, being the York-Peel short form. If your question refers to something that is east of Toronto and outside of that boundary, then it is not for this food terminal to do that. This is a personal opinion, but I would suggest it requires a policy decision and initiative from the Ministry.

Mr. Black: Actually, I was thinking of something within Metro boundaries.



Mr. Bell: Okay.

Mr. Black: But I recognize that you need the market -- you know, you need --

Mr. Carsley: The answer to your question is no.

Mr. Chairman: Thank you. That is the answer. Now, Mr. Dietsch, do you have some more --

Mr. Black: I have another supplementary. Do you --

Mr. Chairman: No. You have asked one supplementary; that is fine.

Mr. Black: Is there a limit on the number of supplementaries, Mr. Chairman?

Mr. Chairman: Sometimes, when you have got about four speakers lined up. Supplementaries can take as much as a speaker can take. So if we just let the questioners --

Mr. Black: Would you put my name then on the list of potential questioners?

Mr. Chairman: Yes.

Mr. Black: Thank you.

Mr. Dietsch: When you went through the process -- I guess what I am looking at, Mr. Carsley, is that first of all we have a waiting list of some 33 people trying to get in the 28 stalls; correct? You have a waiting list in addition to the 20--

Mr. Carsley: No, no. That waiting list is for the people who want new units, who want a new unit if they are built.

Mr. Dietsch: That's right.

Mr. Carsley: Okay; right.

Mr. Dietsch: I thought that is what I said.

Mr. Carsley: I thought you were referring to the present stalls.

Mr. Dietsch: You have an additional 33 people that are looking for units; correct?

Mr. Carsley: Yes. That is right.

Mr. Dietsch: In the A and B? How many additional people have you got looking for stalls outside in the

farmers market?

Mr. Carsley: I think our list there is up to about 75 or 80 people, and most years we are able to take care of most of the people on that list because what happens is -- so we have I think about 85 names now, Bruce?

Mr. Nicholas: It varies as the season goes along.

Mr. Carsley: Yes. So what happens is when the rent invoices are sent out, then the growers really decide whether they want to keep their stall or not, and we usually get about 25 to 30 stalls given up each year.

And so we then give those to -- It is done on a first-come-first-served, basis and we then ask those people who are on the list if they want to, in fact, rent a stall because there is one available. And what happens is at least -- I would say at least 60 per cent of the people that are on the list do not want a stall. By the time they get around to getting it, they do not want a stall, for whatever reason.

So, normally we are able to take care of most of the people on the list in any given year.

Mr. Dietsch: There may be some confusion then because I have been told by individuals that their name has been on the list for a number of years and they cannot get a stall.

Mr. Carsley: Well, if you would like to come in and take a look at our list and see -- It is all categorized by date and everything and there is nobody there that has been on there for a number of years.

Mr. Dietsch: Explain to me how does the list outside on the farmers market, how does it work?

Mr. Carsley: Well, if you want a stall in the farmers market, you get an application form.

Mr. Dietsch: Right.

Mr. Carsley: Which you fill out, bring it into the office, and we put you on the list. And that is how it works. And it is done on a first-come-first-served basis, and we try very hard to make that stick, first-come-first-served.

Sometimes you get pressure from large growers or dealers saying, "I should be on there because I am representing 150 growers and you should give me a stall," type of thing. But we do not make -- everybody is treated the same.

Mr. Dietsch: So the outside list, when you go on that



list for outside, really does mean something then is what you are telling us?

Mr. Carsley: Yes; yes. And we have a request for stall change list as well, and that may be what your constituents perhaps are referring to. I mean, if you have got a stall in the thousand row, which is over by the exit out of the market there, you are probably going to want to move along as a better stall comes up. You see what I mean? So maybe move under the cover; that sort of thing.

So we have a first-come-first-served list for stall changes, and that is a long list because a lot of growers would like to change their location.

Mr. Dietsch: How does your rental go? Does it go by the year? I understand in reading the information that you have a number of different classes.

Mr. Carsley: That's right. Well, Bruce has our price list here. There are 55-foot stalls, 40-foot stalls, and 30-foot stalls. So there are different prices for all those. And then there is growers and dealers. And there is then under the deck and out in the open. So you end up with I guess how many?

Mr. Nicholas: There are 18 classifications of stalls, rates, and you have to remember that there are three classifications of leases.

There is an annual lease which goes from the 1st of July to the 30th of June, and then there is a semi-annual lease that goes from January 1 to June 30th, and one from July 1 to December 31. The one that goes from January 1st to June 30th, there are still available spaces within the market but the other two are jammed and you have to go on a waiting list.

Mr. Dietsch: Have you looked at some type of a floating lease? You are talking about January 1st to June 30th; quite frankly, the area that I represent, strawberries come in the last two weeks of June. You have someone that has to rent a stall from January to June before they can deliver their strawberries on the market. They have to rent it for the whole year. Where is the wise investment on the part of the farmer in that relationship?

Mr. Carsley: Well, we have tried to make it six months based on a calendar year. Now, I think when we were talking last night, I think your point was well taken. We would certainly be prepared to look at trying to do something about that because it has been something that has been talked about for a number of years, I guess. It is awkward, I admit.

Mr. Nicholas: The one that goes from January to June is basically for the flower people, the early flower, the bedding season. You are never going to get a period that satisfies all product coming on stream. So if you start to stretch it a little bit more, then really it is an annual.

There is an advantage of having the semi-annual because we double up. As you may know, we were doubling up stalls. In other words, two people can rent a stall in a year, one from January and the other one from July on. So we are trying to maximize the utilization of space out there.

Mr. Dietsch: I think if my recollection serves me correctly you sometimes rent the same stall a couple of times?

Mr. Nicholas: Yes. We rent out a stall. Let's face it; all stalls are rented. It is fully occupied, and then we rent again on a daily basis. So when you talk about a floating system, that adds another element to it because if everybody showed up, where do they sit, so to speak.

Mr. Carsley: But it is something we could look at, Bruce, I think, particularly for those strawberry people that have that problem.

Mr. Dietsch: And I guess that, just by way of a comment before I ask some of my other questions, Mr. Chairman, that is something I feel would come to light through discussions that you may have on an ongoing basis with your users of your facilities.

Mr. Carsley: Right.

Mr. Nicholas: It is important to note that each day regardless if it is in the middle of the winter or in the middle of summer, we walk the farmers market talking to each of the stall holders, and they know that if they have a problem they can just come to us right there and then, and in most cases that happens.

Mr. Dietsch: I do not want to argue with you but that is not the picture that has been painted for me.

Mr. Carsley: Well, could I just ask -- I am just wondering why the picture has been painted differently because, you know, we are prepared to listen to anybody there. We are in that market every day. I wasn't there this morning, but Bruce was out there this morning, and if someone has got something on their mind, they are encouraged to tell us.

Mr. Dietsch: I will make that point well known.

Mr. Carsley: Yes.



Mr. Nicholas: You can check on that with the people that are there, too.

Mr. Dietsch: The long-range planning that you have in your capital, is there any facility planning in relationship to enhancement of the market for flower growers, greenhouse growers?

You know, when we went through the market yesterday, Mr. Chairman, you will notice that all the flower growers are in their stalls. There is no particular area where if it happens to be an inclement weather day that could satisfy those needs. Has any consideration been taken into place for that in your long-range planning?

Mr. Nicholas: You have to remember that each of those stalls -- there are some 525 -- are rented to some particular person, and he has the right to occupy that. If you then decide that that person has to move out for a flower person, you have to make some accommodations.

The basic accommodation the Board has made in the last few years is putting the deck over the farmers market. That has added to the amount of flowers that are being sold in that farmers market.

Other than that, they tend to go in by themselves. It is sort of self-policing. They will sit where they basically want to sit, and they will do that for any number of reasons. The competitor may have better product beside him so he wants to move away or he wants to move to it, and we allow them to do that amongst themselves. It is self-policing. It seems to be the best way of letting it work.

Mr. Dietsch: So to answer my question in relationship to facility planning for the future, is that a yes or no?

Mr. Carsley: We have thought about the possibility of trying to have a separate flower market in a building -- I mean, Bruce and I have; we have not really discussed it with the Board. It would be similar to what they have in London, England at the Covent Garden market there, a separate flower market.

And that is a huge growing business, that whole potted plant, shall we say cut-flower business, and most of it now is being done by the retail grocery trade. They are bigger flower sellers now than the flower stores. So it is a growing part of the business on the market, but at this point the answer is, No, we have not really done any.

Mr. Dietsch: So you have nothing in your long-range planning?

Mr. Carsley: No.

Mr. Dietsch: Do you have anything in your long-range planning for expansion of your farmers market outside?

Mr. Carsley: No.

Mr. Dietsch: And if I understand from yesterday's line of questioning, you only have eight stalls planned for, A and B stalls, for expansion of their --

Mr. Carsley: Yes, that is correct.

Mr. Dietsch: So that is, in essence, the only planning that you have for future use of the market is those eight stalls?

Mr. Carsley: Yes.

Mr. Dietsch: And do you have feel that that satisfies the future needs of that market?

Mr. Carsley: Well, I mean, one has to look at it from the point of our view of our discussions yesterday. The market didn't move. We only have so much space, and our impact studies show us at the present time that about eight stalls is -- at this point of time with the cold storage being the size it is, et cetera, we probably could not handle -- we do not think we could handle any more.

Mr. Dietsch: Okay. So what you are telling me then is the amount of expansion that you have available to you is limited on that site to eight further units and that is it; is that what you are saying?

Mr. Carsley: At the present moment, yes.

Mr. Dietsch: I do not understand.

Mr. Carsley: I mean, there are all sorts of other things that could be done.

Mr. Dietsch: I am talking about the site where you are.

Mr. Carsley: Okay; yes, that's right. But you can build stuff on the second storey and all that sort of thing. At one time it was planned to have -- I believe one of our plans shows having stalls, et cetera, actually on a second floor, so to speak.

Mr. Dietsch: I guess I am not quite sure whether I am confused by the line of questioning yesterday or the line of answers today. I am trying to look at it in my mind to say, 'Well, the Ontario food terminal has looked at expansion and are looking at -- they are at capacity where they are.' So



if they want to expand from that particular area, they will either have to buy property in the near vicinity or they will have to go up, or they will have to move to a another location. I guess that is really what I am after is, What are your plans?

Mr. Carsley: Well, our plans are to build eight new units at this point in time, sir, and we feel there is very little room to do much more.

Mr. Nicholas: To answer the question about the farmers market, though we rent all those spaces out, it is fully rented, we have not fully occupied all 525 stalls in the farmers market for a good number of years. Ever since the deck has gone up, we have never been at full capacity that every stall is occupied on a given day.

So therefore, though we have people wanting it, it gets into this renting a space, we are renting them a stall, we have not fully occupied all of the farmers market. So therefore, it is not a priority at the moment to add additional stalls since the stalls we have are -- of 500 stalls, the maximum is maybe 350 to 400 we have ever occupied in any one given day.

Mr. Dietsch: But I think the reason for that is because you only have buyers coming in on certain days that buy more on certain days. Tuesdays and Thursdays are better days on the market than are Mondays. Yesterday in as much as you said in your presentation to us that Monday, yesterday, was a busy day, I guess I did not view it that way. It is certainly not busy in comparison to some of the activity that I have seen out there.

Mr. Carsley: Particularly when the growers are there in the summer season the farmers market is a lot busier than a Monday.

Mr. Dietsch: That is where I am getting back to the line of thinking that I have in relationship to developing a long-range plan for the market, and that has to certainly be done in consultation with the users of the market and what happens from that point on, which brings me back to the line of questioning that carried on yesterday in terms of we had, or as I understood it -- correct me if I am wrong -- the Ontario Food Terminal own the 200 acres of land in Vaughan?

Mr. Carsley: Yes. It is sold now.

Mr. Dietsch: I recognize that. And the Ontario Food Terminal Board made the decision to sell the land; correct?

Mr. Carsley: Yes.

Mr. Dietsch: The sale of that kind of entity, does that

have to be approved by the Ministry? Was that approved by the Minister or --

Mr. Carsley: Certainly. There is no question about it. No question about it.

Mr. Dietsch: So they supported the sale of that land?

Mr. Carsley: Yes.

Mr. Dietsch: And the Ontario Food Terminal at that time did or did not have a long-range plan as to what was going to take place in the future as far as the terminal was concerned? All those points lead me to believe that the amount of land that you take up and the amount of units that you have there is as big as you ever wanted to get?

Mr. Carsley: Well, you know, it is a 40-acre site and when we build those new units it will be almost fully developed. What else can we say?

Mr. Chairman: Mr. Mahoney has a supplementary on that.

Mr. Dietsch: I think Mr. Bell had an answer. I just wonder if Mr. Bell sat on the Board.

Mr. Bell: No, but I am privy to what happened since 1980 including that the matter surrounding the sale -- and I think just to remind the members of the chronology, there was a long-range plan in existence vis-a-vis the new property.

Now, the decision was made to sell, and you have heard Mr. Carsley and others speak to that decision yesterday and I do not think it needs to be rehashed. But since the decision was made to sell, yes, there has been a long-range plan not only in existence but implemented because I remind you, sir, of what has happened to the Food Terminal at Queensway since. They have done some things to make the business operation much better.

There is the eight units as proposed, and we can debate whether that is enough. I do not think you would get a great debate on that in terms of absolute numbers, but then you see the realistic brakes on, sir, because to put more than eight or ten units on the existing building will require a substantial capital commitment to the existing premises. I do not think anybody is suggesting that you cannot put more than eight units, but it may require a few bulldozers and some iron blocks, and I do not think anybody is considering that.

It will be a significant capital issue which would, of course, involve the Ministry to do it much beyond the eight to ten. But it is not correct, sir, with respect, to say



that there is not or has not been long-range planning. There has been and it has been partially implemented and continues to be so.

Mr. Dietsch: Okay. Perhaps for the enlightenment of the Committee we can have that long-range plan tabled with us and then we would be able to look at it and be able to understand as clearly as you understand that long-range plan.

Mr. Bell: Yes. It could, of course -- we could give you a full description about what has happened since 19-- your question seems to start from 1980, sir, the decision not to go to the Vaughan property, and that can be organized for you and presented to the Committee when it is completed, yes.

Mr. Chairman: I think Mr. Mahoney has a supplementary.

Mr. Mahoney: Do you have any more questions?

Mr. Dietsch: Well, I would, you know --

Mr. Chairman: We have four other speakers. There is Grier, Runciman, Farnan and Black that are on the list.

Mr. Dietsch: That is fine, Mr. Chairman. I can yield the floor and you can put me back on the list at the bottom.

Mr. Mahoney: Sir, my supplementary is very quick. I just wanted to know if the eight units you are talking about is Phase III that was referred to by the Chairman. And in the same line that Mike was talking, if we could get the costs and whether or not there has been a cost-effectiveness analysis done of doing eight or doing larger increments of eight. What you are saying is the land is there to do it if the capital dollars are there. It is not there?

Mr. Bell: The land is not there to do it but Mr. Carsley just mentioned you may want to go up a storey.

Mr. Mahoney: Okay. So there are ways of doing it if we are prepared to --

Mr. Collins: Under the saying, 'Money can make all impossible things or difficult things possible.'

Mr. Chairman: Thank you. Mrs. Grier?

Ms. Grier: Thank you. Mr. Chairman, I just wanted to say how much I appreciated the concern that the fellow members of the Committee shared yesterday about the past operation of the Food Terminal, and I appreciate the commitment and the obvious sincerity of the Board's approach yesterday that they were not happy with the existing rights

and perpetuity and didn't want to see that perpetuated any further beyond, and so I think what I would like to try and explore is where do we go from here?

And I was interested in your answer yesterday that the Board at the present time was not faced with any request for a further assignment or subletting of any of the units, and I am wondering what has to happen and who has to do what in order to make sure that when you are next faced with a request either for an assignment or a sublease that you can handle that in the manner that we all want to see it handled in the future, i.e. not granting it in perpetuity or continuing it to be in perpetuity and not allowing it to be turned over at some enormous sum to the head lessee.

How can we achieve a kind of freeze from here on in so that the next unit that becomes available is made available on the open market, so to speak, to whoever wants it?

Mr. Nicholas: I think Mr. Righton should answer that because the Board right now -- and we talked about that 'unreasonably withholds' -- I think Mr. Righton better answer that, the legal implications of that.

Ms. Grier: Okay. But in looking through what you gave us yesterday, it is obvious that that 'unreasonably withhold' is not going to be applied to the C units. And what I want to say is, Okay; how can we begin to apply that to the next vacant unit in A and B?

Mr. Bell: Well, if I might start, Mrs. Grier and Mr. Chairman --

Mr. Chairman: Mr. Bell?

Mr. Bell: -- with respect, it is not appropriate to make a general statement, policy or otherwise, that the next time somebody seeks to consent for an assignment or a sublet it will not be done because we discussed certain circumstances yesterday where -- assume that somebody has owned a unit and has spent \$50,000 to \$60,000 -- or two units and has spent \$50,000 to \$60,000 per annum for the last five to six years and wishes to sell the business. I do not think this Committee or the Legislature would want to be seen or, in fact, would intend to be seen as restricting someone's ability to sell a business asset. So, with respect, I think we should decline to discuss it on that cent.

If you want to go to the predecessor committee's three recommendations -- two recommendations -- that the perpetuity issue and the assignment issue be dealt with in some by way by legislation. And not to repeat what we said yesterday about the need to afford, to the extent that it is necessary, protection not only to the Board and its



management but to government, I think that is where you start and, with respect, I think you need another party at the table, the party who would be formulating any legislation in accordance with or in a manner that reflects this committee's and the predecessor committee's views plus the Ministry's own policies. There are a number of ways it can be done --

Ms. Grier: Which we went into.

Mr. Black: -- which we went into. And I think that either with this Committee or in some other context there has to be -- as I say, I think you have to start building scenarios, like quick flips. We are not only going to be under any circumstances -- somebody who has had a family business for 20 to 25 years who has built it up and wants to sell that business, which includes a lease and a substantial amount of goodwill, I am not so sure you want to get into that.

So forgive me if it sounds like a lawyer's rambling, which it is, but we view our function to include before you the raising of these concerns because we believe they should be the Committee's and the Ministry's and the Legislature's concerns.

Ms. Grier: So in other words you are saying that nothing can change until some action is taken by the government?

Mr. Bell: Well, insofar as the A and B are concerned, yes.

Ms. Grier: Yes.

Mr. Bell: Insofar as anything else, with new units, it is a new ballgame.

Ms. Grier: Okay. Let me then turn briefly to the new units. And of the 34 applications for the new units, can you tell me how many of those are from existing sublessees or holders of existing units?

Mr. Carsley: Well, those people -- I think there are -- existing sublessees, I think there are three. Now, do not hold me to this, but I believe three existing sublessees have --

Ms. Grier: Have applied for new units.

Mr. Carsley: -- have applied for a new unit, and I would say about 4 of the 28 of the wholesalers, of the A and B unit leaseholders -- no, 5.

Ms. Grier: So on that list of 34, 3 are existing

sublessees --

Mr. Carsley: Right.

Ms. Grier: -- and 5 are existing A and B holders?

Mr. Carsley: That's right.

Ms. Grier: And in your formulation as to allocation of those units, you said yesterday that you would be looking at totally new applications. How do you define that? Are you excluding the five existing A and B holders, or are you excluding also the 3 existing sublessees?

Mr. Carsley: No. The three existing sublessees are obviously people who should have a right to one of the new units or a right to at least be considered. The A and B leaseholders, of course they are forbidden, in fact, to --

Ms. Grier: In Dr. Switzer's letter to you, which I think appears November the 3rd in the chronology that you gave us, and he had reminded the Board of the need to document the new tenant selection criteria, and I wondered if you had done that to the Minister yet.

Mr. Carsley: The Board has not done that yet.

Ms. Grier: And when do you anticipate being ready to do that?

Mr. Carsley: Well --

Mr. Collins: Well, I guess --

Mr. Carsley: Sorry.

Mr. Collins: Well, it is scheduled to be done. I can't tell you the date, but it is scheduled to be done as quickly as possible.

Ms. Grier: I notice it is one of the outstanding matters that still have to be --

Mr. Collins: Yes, that's right, and I do not think I should tell you anything more than that right now.

Ms. Grier: And the other request from the Ministry had been that you develop a defensible written rationale for your desire to keep Section 12, and I wondered if you had prepared that or when that might be concluded?

Mr. Collins: I can't tell you anything more today than was already on record before this meeting yesterday when that same discussion was brought up.



Ms. Grier: So that is in the works but not yet complete? There is no target --

Mr. Carsley: There is a synopsis of it, Mrs. Grier, in the Chairman's opening statement.

Mr. Collins: I really cannot add anything more at the present time.

Mr. Bell: I think, in substantive terms, whenever the the formal document is prepared, it will not say any more than what was said yesterday about -- Section 12 is not a monopoly; it is a defined geographic area, and the Food Terminal exercising its discretion has historically and requires to in the few future be the first line of screen, if you will, for wholesale producers within the defined area. And if the food terminal does not do a good job on any one particular application for approval, the Minister can set it straight.

And that is a pretty good line of check and balance. It is in a number of pieces of legislation where agencies, boards and commissions may do something on a first-time basis, subject to recourse through to the Minister. And essentially that is why it has worked well. Since 1954 there has not been an abuse or a misuse or an error committed, in our judgment, and there is no -- I guess, 'if it ain't broke, don't fix it,' is where we are coming from.

Ms. Grier: Okay. Can I turn a bit to the expansion and what ought to happen in the future. When we were there yesterday I discussed I think with one of you the issue of the rail lines and the land occupied by the rail lines, which is now under utilized because of the changing patterns of trade.

Your decision to go with eight units and your feeling that eight units is all that you can physically accommodate is based, I take it --

Mr. Collins: It could be ten.

Ms. Grier: It could be ten; eight to ten. Is that based on the assumption that you retain all of the existing rails first?

Mr. Carsley: No. Most of the rail lands would be used to develop the new units.

Ms. Grier: I see. So there is no more space to be gained by eliminating even more rail land?

Mr. Carsley: I beg your pardon?

Ms. Grier: There is no more space to be gained for

units by eliminating even more rail land?

Mr. Carsley: Well, we would keep those house tracks that you saw and some tracks to the east of the property --

Ms. Grier: Right.

Mr. Carsley: -- because we would want to still have the ability, or our tenants want to have the ability to be able to receive by rail.

Ms. Grier: Okay. I guess that is what I was coming to. The decision of how much rail you retain is based on the needs of your existing tenants?

Mr. Carsley: Well, and of course the new tenants would want that ability, too.

Ms. Grier: Who uses the rail access most among the range of tenants that you have?

Mr. Carsley: Well, maybe Mr. Melara could perhaps better answer that than me or than us. I do not know.

Mr. Melara: You mean what commodities or with tenants?

Ms. Grier: What kind of tenants? I mean I assume your small growers and the flower people, they do not need --

Mr. Melara: No, no. I would say it is basically the A and B units that are using it. The farmers market would have nothing to do with the rail lines.

Ms. Grier: And of the A and B units, do the major wholesalers, like Oshawa, require the rail lines more than small ones?

Mr. Melara: Oshawa have their own siting within their own plant, but the Ontario Produce Division would use it, Dominion Citrus -- depending on the commodities. People with oranges, people with celery, people with potatoes, broccoli, there are still commodities and it varies house to house.

Ms. Grier: And in your decision as to how much of the rail to retain, did you do any systematic analysis of how frequently it had been used over the past three or four years and by whom and for what goods?

Mr. Melara: We have manual checks on the amount of rail and decline in rail, what amounts are used, but there are still seasons and there are still possibilities of possible -- the reason we are keeping more than probably -- I guess of the 400 or so cars that we are using, there is always a chance of a nation-wide truck strike that has



happened a few years back that you want a little more rail space available and you do not want to completely box yourself without that --

Ms. Grier: My constituents would prefer that you use the rail all the time and not the trucks, so I am a real supporter.

Mr. Melara: I'm sorry?

Ms. Grier: My constituents would prefer that it was the railway lines that was used and not the roads for your trucks. So I have got a whole other element in there.

When you sold the Vaughan land, it was 200 acres I guess you figured you needed then to accommodate the kind of expansion that a new yard would have meant. Was 200 acres what you were looking at?

Mr. Carsley: Well, I was not involved at that time, Mrs. Grier, but the thought was that the additional land would be used for future expansion.

Ms. Grier: And when that land was sold, how did you put it on the market?

Mr. Carsley: Well, I think Mr. Nicholas perhaps could answer that better than --

Mr. Nicholas: I hate to say it but I was not involved at that time. All I know is -- I think maybe Rupert could answer that.

I know we gained about \$900,000 on the sale of the land. You have to remember the Food Terminal Board did not spend one red cent for that land. It was all on a loan. It started around \$2 million and went close to \$9 million.

Ms. Grier: That is what I have difficulty in understanding. You bought 200 acres in Vaughan in the 1960's for \$2 million.

Mr. Nicholas: In that area some \$2 million.

Ms. Grier: And you sold it in the 1980s?

Mr. Nicholas: Right.

Ms. Grier: For what?

Mr. Nicholas: It was around 8 million -- somewhere in that range.

Ms. Grier: And happened to the 8 million?

Mr. Nicholas: Okay. Well, except for \$900,000, it all went to pay a bank loan because we never put anything towards principal or interest. So visualize a \$1-million bank loan that just escalated at the times when we had 17 per cent prime rate.

So it was just gaining in leaps and bounds and that was one of the problems because the Board had to go to the government and ask for a guarantee each time it exceeded the value of the loan. It got to the stage -- I think you received the notes yesterday, the value of that particular loan.

So when it was sold off, there was \$900,000 left. That money, plus money from a sinking fund to pay off the debentures that we had, went towards the first redevelopment phase because the first redevelopment phase in the terminal at the Queensway --

Mr. Collins: Mrs. Grier, you do not understand. I think you do not understand how the --

Ms. Grier: No; not being a business person is a real handicap. I thought if I borrowed 2 million in 1960 I would have paid it off by 1980. No? I mean, when I bought my house in the 1960s, I paid off the mortgage and would have a profit if I sold it in the 1980s rather than owning more money.

Mr. Collins: I explained how the Vaughan land was paid off and how it was carried during those years.

Mr. Nicholas: Okay. The Vaughan land was purchased via a loan. The Board got a loan through the Bank of Montreal and bought that land, and then that loan escalated over the period of time that we held that loan because the Board did not have any money to payoff any principle or any interest on that loan.

Ms. Grier: And the government knew you were not paying anything off on that loan?

Mr. Nicholas: I assume so, yes, because we went to the government a number of times to get the loan value, the guaranty, raised each time along.

Ms. Grier: And nobody suggested that maybe instead of raising the guarantee you pay off the loan?

Mr. Nicholas: I can't answer that because I was not there at that time. I do not know that, but I do know that --

Ms. Grier: Sorry. Continue to explain to me how business works.



Mr. Nicholas: So you have a loan that you do not pay at the bank, the principal and interest are going to build up and build up. It goes from 2 million to 8 million. The value of the land was going to be less than the value of the loan at the time it was sold. Or it was sold in May and if it had gone to December, we would not have had any money.

So the bottom line is the land is sold, the Board receives a \$900,000 surplus. That money goes back to the Queensway location for the first redevelopment phase in the farmers market and the loan is paid off.

Ms. Grier: I could have had Minaki Lodge in my riding and not known about it.

Mr. Nicholas: I am sorry, the loan is paid with the proceeds from the sale.

Ms. Grier: My mistake.

Mr. Black: Another skeleton in the closet.

Mr. Nicholas: No skeleton at all, sir. I take exception to that.

Mr. Melara: Mrs. Grier, who would you expect to pay for that loan?

Ms. Grier: Well, I guess I would have thought that your tenants might have, perhaps in the cost to the Food Terminal of preparing for expansion and acquiring property for expansion, might have been seen as a cost towards the operation of the terminal and somehow reflected in the leases that you were having with your tenants. But no, that obviously was not the Board's view.

Mr. Nicholas: The other side is if the Board had gone to Vaughan Township, the property at the Queensway would have been disposed of and the proceeds from the Queensway sale would have gone to pay the loan and put the building up. And since that did not happen, the Board had to get out of the Vaughan land, pay the bank the money that was owed, some \$8-\$9 million. Any proceeds left over went back to the Queensway location, went into the first redevelopment phase at the farmers market.

Ms. Grier: And the land was sold by the Food Terminal Board. Did you put it up for public tender or how was it put on the market?

Mr. Nicholas: That is where I go to the lawyers.

Mr. Bell: Mr. Chairman, through you to Mrs. Grier, in 1979 the property was advertised for sale as properties of

that size are done, and the Board had contact with a goodly representative number of real estate agents --

Ms. Grier: I bet.

Mr. Bell: -- who deal with property of that nature and was also contacted directly by prospective purchasers, and I think the number was, in relative terms, sizeable.

The Board accepted an offer from Cadillac Fairview to purchase the land. When the offer was submitted, that was the first time Mr. Righton and subsequently myself were involved to advise the Board in respect of the offer, and like all offers that you receive of that size and nature, you take expert advice on whether the offer represents fair market value and is reasonable in the circumstances.

The Board, through us, did receive such advice from an independent appraiser, and his advice was that it represented fair value and was a reasonable offer in the circumstances, and while they do not recommend you accept it, they nevertheless gave the Board all of the ingredients to make the decision.

If you permit me to give you a little background of that property, ironically a corner of that property was expropriated by the Town of Vaughan. It took away a chunk of the property. This was back in 1975 or 1976.

Ms. Grier: Perhaps you should explain the property is on the north side of Steeles just west of Jane.

Mr. Bell: Yes. And there was an ironic push and pull between the Town of Vaughan, the expropriator and the Food Terminal, the then owner, in the expropriation. The Food Terminal contended that the highest and best use of that property was as a wholesale produce terminal and that the amount that they offered, which was relatively -- and I believe significantly smaller than the price paid a couple of years later -- they contended that its highest and best use was as it was sitting, which was former farm property with no immediate development potential.

And the problem was this, that Ontario Food Terminal wanted to hook into the sewer and water services of Metro, and because they were across the road, Metro was not at the time going to have anything to do with that because Metro, frankly, was taxed to its capacity because they had not yet started and/or completed the substantial sewer and trunk line which goes down -- where does it go? It goes to the lake, I think --

Ms. Grier: They all go into the lake.

Mr. Bell: You are right -- in a south-westerly



direction. And Vaughan dug its heels in and said, 'There is no way you are going to hook up to us.' And that is one of the reasons which made that property in terms of its development potential in the context of the Food Terminal's late 1970-1980 situation again not as desirable.

So that is by way of background, and the 40,000 an acre as received, as I have said, was considered in the circumstances then and there a good price.

Ms. Grier: So 40,000 was what you received?

Mr. Bell: Yes.

Ms. Grier: On the basis of the land being unserviceable?

Mr. Bell: On the basis of the land not immediately connectable to the Metro services.

Ms. Grier: How did Cadillac Fairview ultimately service it, because it is now completely covered with industry.

Mr. Bell: I can't help you with that, I am sorry. Since the property was dealt with, I have not had any -- and I do not think Mr. Righton has had any knowledge or dealings with the property.

Ms. Grier: It is interesting. I this morning asked an industrial commissioner very familiar with that site what he thought that land would have been worth in 1980 and was told \$150,000 an acre.

Mr. Bell: Well, with respect to the gentleman -- and I do not know who it is -- I do not think he had attended to its valuation in the way that the Board had. The Board took advice from a knowledgeable, well-respected, independent appraiser.

Ms. Grier: Okay. Thank you very much, Mr. Chairman.

Mr. Chairman: Thank you. Mr. Runciman, then Mr. Farnan and then Mr. Black and then Mr. Dietsch and then Mr. Mahoney.

Mr. Collins: Mrs. Grier, I just might mention this, although I had nothing to do with it at the time, you understand that, that when property is sold it can be sold for cash or it can be sold under many terms, and my understanding was that it was sold as a cash sale so that the money, the loan, could be paid off immediately -- there was not a mortgage taken back -- so that the loan could be retired immediately along with the proceeds that Bruce has just talked about could go back for quick development at the Food Terminal, the existing Food Terminal, which needed

development very quickly.

So please be mindful of the fact that the sale was a cash sale versus one that could have received far more on a per-acre basis by holding back a mortgage.

Now, you did not mention when you talked to this person as to the value as to the conditions of sale, and I think that should be -- anybody who sold land, they should be aware of that.

Ms. Grier: And presumably the offer that you accepted at the Food Terminal and the negotiated was done in consultation with OMAF at that time? The Ministry was aware of the kind of deal and of your need for cash as opposed to taking back a mortgage?

Mr. Collins: Well, I think I can only presume that be to a fact because in our Act and the regulations it says that any dealings of that nature have to be sanctioned by the Ministry. So I am sure they would have not been outlawed in that -- they would have gone by the Act.

Ms. Grier: Thank you very much.

Mr. Chairman: Mr. Runciman?

Mr. Runciman: Mr. Chairman, I wanted to briefly plow a new field -- I am not trying to plow up ten-year-old skeletons.

I am just curious about how this business is handled in other jurisdictions. What happens across Canada? For example, do we have a Crown agency, a Crown Corporation, doing the same sort of thing in all of the other provinces that you are doing?

Mr. Carsley: I should answer that one, sir. There is a terminal market in the city of Montreal, and that is the only other terminal market in Canada.

It is smaller than our market. It has not been well kept up. It is a private market in terms of the fact that it has 700 shareholders, who I gather squabble all the time, and it has not worked out terribly well and, in fact, is in decline. But that is the only other market in Canada and the municipality, the City of Montreal, has some involvement in that they leased the land to the shareholders, so to speak.

Mr. Runciman: But you are unique in the sense that you are a Crown Corporation?

Mr. Carsley: That's right. Unique in Canada, but the market system through western Europe and the United States



and South America -- for instance, the markets in most jurisdictions do have some involvement either with the state or with a municipal government.

For instance, the Covent Garden market in London, the large English market, is a government agency. It is somewhat similar to the way we are set up.

Mr. Runciman: A municipal government agency?

Mr. Carsley: No. They report -- Their Director or Chairman reports directly to the UK Minister of Agriculture. So it is whatever they call it -- national government.

Mr. Runciman: What about New York state, are you familiar with that?

Mr. Carsley: There are a number of markets in New York state. The biggest market, of course, is the Hunt's Point market in New York City which, until recently, was a municipal market, and the City of New York turned it over to the tenants.

Now, one thing that our market has -- and I do not know if you were with us for breakfast yesterday --

Mr. Runciman: I have been out there before.

Mr. Carsley: We have a very large farmers market. Most of these other markets do not have a farmers market at all -- you know a warehouse-type market, if you will.

Mr. Runciman: One of the things that was indicated to us, when the facility was constructed, I gather that it was to -- the fact that there was a lack of interest by the private sector; that was one of the justifications that has been indicated to us in any event. And I notice in the Chairman's opening statement yesterday that he mentioned on page 7 that the Board believes Section 12 should remain in the Act to protect the market against the creation of a similar produce terminal in the confines of York and Peel counties.

So apparently one of the justifications for bringing in the Ontario Food Terminal Act in the 40s is no longer there, and you are indicating that yourself or at least the Chairman is through his opening statement, that there obviously was a lack of interest by the private sector in the 40s but that is not the case now.

In fact, one of your arguments for retention of Section 12 is that yes, indeed, there is an interest out there and if we do not retain that protection, we are going to see the possibility of the development of another terminal, which could be harmful, in my view.

So what I am saying is that one of the justifications for the Act's creation is no longer there. In essence that is what you are saying; true or not true?

Mr. Collins: There is not a very direct question there.

Mr. Bell: Let me take a try at it. The reasons given by the Chairman and others as for the retention of Section 12 is, I think, with respect, confined to Section 12. Yes, there is an interest. The development, the extent of that market, is not what it was in 1954.

Having said that, because there has been such a thing as the Ontario Food Terminal since 1954, which has had the profound effect and influence on the market as it has, there is a need, as has been explained and it could be explained further, to sustain that.

If you take the wheels off, you throw the whole industry into a calamity, and within the defined area of Section 12, as the Food Terminal has had the first screening authority in the past, the Board and management need to retain it in the future; otherwise, you have to the potential for calamity.

Ideally, if you set up another food terminal across the road of identical -- I am not privy to that business in a substantial way, but I could certainly see a great potential for chaos.

Mr. Runciman: Well, I question the use of those words, "calamity" and "chaos." I think -- you just mentioned New York state in the city of New York where they have made a change from a municipal operation to an owner-operated function, and I think if it is done properly and planned properly and perhaps phased, it does not have to necessarily generate chaos and calamity.

But in any event, one of the comments you made in this as well in page 2 that there are approximately 400 independent retail produce businesses family owned, and you are implying here, or at least I am inferring from it, that if we had not had this particular food terminal, it is unlikely that those businesses could have been successfully established.

And again I guess I have trouble accepting that as a justification for your existence as a Crown Corporation. That is really where I am coming from because we have seen in a lot of other jurisdictions where indeed we have a multitude of family-owned businesses who are thriving without the presence of a government, a Crown corporation, food terminal.



So what would happen if indeed the government decided that perhaps we should look at privatization of the Ontario Food Terminal if there is an interest out there. Maybe this is something the government should not be playing such an active role in. Any reaction to that?

Mr. Carsley: Well, this is a personal opinion. I think that the market could perhaps be privatized. It would have to be properly done though so that the farming community had a continued interest in it, and that might be difficult, but it is certainly something that I would think that your committee would certainly want to look at. And I am talking off the top of my head and just making a personal opinion.

Certainly, it seems to have, from what we understand, it seems to have worked in New York City. It is a cooperative there now. That is the way it is described. It is certainly something that, as I say, the Committee should, I would think want to look at.

Mr. Runciman: You mentioned cooperatives and I do not have a great deal of familiarity with them, but the Ontario Flower Growers' Cooperative, which is a totally farmer-owned cooperative I understand which functions somewhat similar to yours --

Mr. Carsley: No. No, it is not. It is not at all.

Mr. Collins: It is not anything like it at all.

Mr. Carsley: I meant cooperative in the sense of ownership, not cooperative in terms of a group of growers getting together and forming a cooperative.

Mr. Runciman: Would that be a feasible alternative to Crown ownership, a cooperative in terms of your kind of operation?

Mr. Carsley: Well, maybe we should defer to Mr. Melara. How would you feel about that as a wholesaler, sir?

Mr. Melara: First of all, if I may, let's clear the air about the flower auction. The flower auction -- flower cooperative sells on the basis of an auction and it is a Dutch auction.

And I have been many years in the produce business and fairly active during some of those years with the Fruit and Vegetable Growers' Association who are very concerned with marketing, and a suggestion keeps coming up time and time again, not so much recently but particularly from our Dutch friends, and they think, 'Well, the Dutch auction works in Holland; why would it not work here?' And the thing has been argued back and forth.

So I am not prepared to make a statement on it. I just say that it is a very controversial issue within marketing and I think by and large it must have gone out -- gone by the board. So let's not --

Mr. Runciman: Well, as I said, I am not very familiar with your operations, but certainly I have heard of a Dutch cooperative, whatever that means. In any event, I was simply interested in the cooperative aspect of it and your general manager mentioned it.

Mr. Chairman: Maybe for the record could you tell us how the Dutch auction works so that the people reading it will know how the clock goes back. Mr. Chairman, could you tell us how the Dutch auction works?

Mr. Collins: Yes. A sample of the particular product -- the farmer brings his product in and it is labeled -- identified, I am sorry -- and then a sample of that product at least, if not all of that product -- if it is a large shipment then a sample comes in if not all of it, and it is tagged, and the clock actually starts at 0, let's say 100, and drops.

And all the buyers sit up in the gallery. They have first had a chance to view the product that they wish to buy. Obviously there is a figure in their mind that they may want to purchase that particular thing at, and within about two seconds, I believe, or maybe less -- a second and a half -- the dial has gone from 100 to 0, and they punch it maybe at 84. Maybe if he was going to punch at 84 and somebody has punched it at 85, they have lost the sale.

Mr. Nicholas: If I can answer your question about privatization versus government control, again a personal opinion only and mine differs somewhat from Bill.

I feel that the people of Ontario -- and that is why the place is there -- benefit by having the government of Ontario involved in that facility. We have certain areas that people do not like, but overall with the number of people involved in that marketplace, I think that they all benefit by the fact that there is some independent body not interested in their own particular bottom line -- in other words, the Board, yes, but we can operate that so an Ontario farmer has a facility that he can come to and market his produce and we set up a system of allocating stalls, and there are some questions about it, but it is a lot fairer and above-board type of a system that you can get if you get private interest involved.

And though we have weaknessss and we talk about the number of people and in that, I think the people of Ontario benefit by having that a government facility. And I raise that point because our former Chairman toured the world and



found that many of the government facilities were better run, better maintained than private-sector markets, that the people from the Montreal market -- that is our only Canadian counterpart -- We have representation from the provincial government people come to us, examined our Act to see how ours operated versus the Montreal. We have had people from the City of Montreal come and look at our Act in relation to that particular market.

So I feel on a personal basis that we benefit, we, being the taxpayers, the citizens of Ontario, by having the government involved.

Mr. Runciman: Well, that does not surprise me. I do not know question your sincerity; I was surprised by the General Manager's comments. That is when I said that I very much appreciated them.

Mr. Nicholas: Well, maybe --

Mr. Runciman: I do not want you to elaborate.

Mr. Carsley: I will not say anything else. I tend to agree in part with what Bruce says, too, but at the same time I would think as a committee you would want to look at privatization.

Mr. Nicholas: We sometimes agree and disagree but basically, you know, you asked for personal opinions.

Mr. Chairman: We are running short of time and we are getting into conversation. Have you much further questioning, Mr. Runciman?

Mr. Runciman: Just one more question, Mr. Chairman.

Mr. Chairman: Thank you.

Mr. Runciman: The New York example that you mentioned, when did that take place?

Mr. Carsley: I believe about a year and-a-half ago. It is recent.

Mr. Runciman: And they went from municipal ownership to a cooperative?

Mr. Carsley: Yes. In other words, just a form of, I guess, ownership. Each, I gather, tenant has an interest in the thing.

Mr. Runciman: Okay.

Mr. Carsley: How it works exactly I am really not exactly aware of all the details.

Mr. Chairman: Mrs. Marland has a supplementary and then Mr. Bell.

Mrs. Marland: When you were responding to Mr. Runciman's questions about the US equivalents, do any of the markets in the United States have both retail and wholesale?

Mr. Carsley: You mean as a combination? Yes. In fact, the Montreal market has a retail side to it. In other words, the farmers market and the Montreal market, the consumer, the general public, can come in, I think.

Mrs. Marland: No. I meant are the people that are there retailers and wholesalers?

Mr. Carsley: I am not sure, to be honest with you.

Mrs. Marland: In Montreal or the examples in the States?

Mr. Carsley: I dare say there is that possibility. If a company decides it wants to have vertical integration -- like many of our Canadian retailers -- all one has to do is look at the Weston organization; they make everything themselves. So does Safeway.

So vertical integration is something that is common in the grocery business, and I would have to say -- and it is in the States, too -- so I would have to say probably in markets the States there are retailers probably having units in markets in the States.

Mr. Chairman: Mr. Bell?

Mr. Bell: Mr. Chairman, on the issue of privatization, and as usual Mr. Runciman's questions are quite thought-provoking, if you --

Mr. Dietsch: Or just provoking.

Mr. Bell: No; no. I have known Mr. Runciman for a long time and I have learned long ago to pay very close attention to his questions because they are well thought out.

If you consider privatization in whole or in part, you have got to think very carefully about the concerns that have been expressed about the perpetuity and the assignment clause, because if you privatize, you have lost any ability to deal with that. And what the market will bear, if I may use the word "market" in a general sense, will be the order of the day. I don't say that is a good or a bad thing but it is a fact. And with privatization go the free enterprise law of supply and demand issues.



Mr. Chairman: Any further questioning, Mr. Runciman?

Mr. Runciman: No, sir.

Mr. Chairman: Thank you. Mr. Farnan?

Mr. Farnan: Thank you, Mr. Chairman. I want to come back to what I think was the major issue, the issue surrounding the perpetual leases and the subleases, and that was, I think we all agree, an initial mistake and has put the Board in somewhat of a straight jacket.

And in making my comments, I want to express some concern with the kind of -- the direction and tone of a considerable amount of questioning that took place in this area. Now, this was, I think, much more in evidence yesterday than it has been today, so it is probably a good thing we all took a break from the Committee and slept it off overnight.

But just to clear up for myself, the perpetual leases, if these were to cease, if these were to cease to exist, this would free up the Board, would it not, to plan for the future more effectively?

Mr. Carsley: Well, there is no question about the fact --

Mr. Farnan: And it was, in fact, a critical issue in terms of your decision not to move at one stage?

Mr. Carsley: Certainly from what we understand, yes.

Mr. Farnan: Well, the direction yesterday seemed to be, you know, What is the Board doing about this? And it is a legitimate question, but it has to be balanced by what is the government doing about this?

And I want to summarize to some extent what I heard the Board saying yesterday, and it amounts to simply this: We have been through this process before, we recognize that there is some injustice in this leasing policy, and we have expressed this to the government.

Is that basically an accurate reflection of what you testified before previous committees and this Committee?

Mr. Carsley: Yes.

Mr. Farnan: Okay. Well, I think the crux of the matter then is that this straight jacket that we are in basically is one that allows usurious practices, it allows greed and extortion on the part of the major leaseholders, and the sub-leaseholders are being shafted.

Mr. Furlong: Mr. Chairman, a point of order. A point of information. My friend, my colleague, has made some statements implying that the questions yesterday lead to that conclusion, and that is certainly not -- if you have heard that from any of my questions, that is not the position that I was at least following, and I think his statement just now is certainly an assumption that he has made and certainly I do not share that view and I would like that recorded from my perspective.

Mr. Farnan: Maybe I can rephrase that, Mr. Chairman. I can rephrase that and simply say that my judgment is --

Mrs. Marland: Well, on a point of order, Mr. Chairman --

Mr. Chairman: Mrs. Marland?

Mrs. Marland: -- would this present speaker be willing to withdraw the words that he has used? I do not have like to see a phrase such as "extortion."

Mr. Chairman: I believe that is what was --

Mrs. Marland: Well, no, he is just saying he has changed it to it being his understanding. I would like to make it very clear that I think the use of those words is inappropriate in this committee, and I do not want to be part of using the words "extortion" as a conclusion on -- certainly an my behalf either.

Mr. Farnan: Basically, Mr. Chairman, any remarks that offend the Committee members I am prepared to withdraw if they were inclusive remarks in the judgments that I am making. The judgment will be my perception of what I heard.

Mr. Bell: Excuse me, Mr. Chairman.

Mr. Chairman: Mr. Bell?

Mr. Bell: I hesitate to interrupt, but I have got to in view of what -- it may be a matter of syntax or the usage of words, but I heard some things that frankly imputed criminality on the part of some members of the Board and some of those tenants and, like Mr. Furlong, I did not hear anything yesterday that came remotely close to that, and frankly I did not hear anything that came close to a conclusion of maladministration on the part of the people of the people that are sitting before you.

Mr. Farnan: I wonder if you would explain to me what I said that imputed such a conclusion on the part of the Board?

Mr. Bell: I heard extortion, sir, on the part of



certain tenants, and the record is clear that two members of the Board are A and B tenants and two other members of the Board are other tenants. And whether or not those remarks were intended to refer to the particular members of the Board as described, we are greatly concerned as respect to those remarks maye applying to any tenants.

There is no evidence before of you whatsoever of anything of that nature, and it is unfortunate that we have to be concerned this way. I guess that is all I wish to say for the record.

Mr. Chairman: Well, I think Mr. Bell is certainly entitled to take objection to anything that he says. However, I do believe that he has the right to express his opinion, and I believe that that was what he was doing. Whether you accept his opinion or not, that is debatable.

Mr. Bell: We are not questioning the member's right, sir.

Mr. Chairman: Right.

Mr. Bell: Not at all; you know that.

Mr. Chairman: The member can proceed.

Mr. Farnan: Let me rephrase because I do not want to lose the point if it is perceived as an exaggeration of the situation, but certainly let me put it this way: There is the potential for those people who are in a sublease position to have demands placed upon them that are excessive, and I think -- and that there may be room for a consensus.

But what disturbs me is that while we focused on asking the Board to address the issue, we have had government silence, and this silence is tantamount to acquiescence of the status quo.

Since 1979 the report has been in, the recommendations have been in, and successive governments have done nothing, and if we are to make the charge that the Board has done nothing, I think we have to also accept the fact that as a government we have done nothing.

As I listen to the Board, what I heard was that by their legal advice, to some extent their hands had been tied, and we have successive governments who have known what the situation was that have not responded. Now we have another chance.

Mr. Chairman: Mr. Farnan, if I could have your point.

Mr. Farnan: I will conclude.

Mr. Chairman: Okay. I was hoping --

Mr. Farnan: Basically what I am saying is this: Considerable tax dollars have been paid to finance the Committee in '79, the same is true in 1988, and unless we address this major issue concerning subleases, this is a waste of taxpayers's money, and it also will allow the potential for an extreme injustice to occur.

And I would at this stage be recommending to our Committee if we are going to take a strong step towards addressing this issue, that (a) we request the Minister to enter into dialogue with the Committee prior to writing our report, and also that we seek legal counsel prior to writing our report.

Mr. Chairman: On that point, Mr. Farnan, we have these gentlemen here for one more hour, and I think they are here for us to direct questions to them. When it comes time for us to go into depth in the report, the remarks that you are making would probably be more appropriate at that time. So if we could proceed onto the questioning of our delegation, and I have Mr. Black next on the list.

Mr. Farnan: Yes. I have one question to the delegation, and it would be regarding a publicly-owned facility.

The remark was made that all of the people in the facility would benefit from the publicly-owned operation, and I do not think you can see say that is true given the fact that the sublessess are in this unacceptable position. And publicly-operated facilities are of benefit, but they are only of benefit when they are run fairly and efficiently.

And my contention would be to the Board, admittedly that mistakes were made by previous members in setting up the Board, but it cannot be fair as long as this system of perpetual lease and sublease goes on, and in order for a publicly-operated facility to continue, unless we address the abuses and eradicate the abuses, then I think we cannot claim that all of the people there will benefit. It is only if we address the abuses that we can make that claim.

Mr. Chairman: And what was the question?

Ms. Grier: What do they think?

Mr. Farnan: What do you think? It is obvious.

Ms. Grier: Would you not agree?

Mr. Chairman: We will move on to Mr. Black. Thank you.



Mr. Black: Thank you, Mr. Chairman. It is a pleasure for me to have the opportunity to ask a question again. It has been so long.

I have a couple of questions. I would like, first of all, to did deal with the -- I think all of us here recognize that the current Board is not necessarily responsible for any of the problem, and it may well be that past Boards are not largely responsible for the problems, but I think all of us recognize there are some problems. So I would like to focus on finding solutions to those.

I want to suggest to you there are three options, really. If we are going to clear up some of the difficulties, it seems to me we have to look at a significant expansion at the present site; a new site altogether, which would allow for a larger food terminal; or a second food terminal within the Metro Toronto area.

I am going to ask you if that third alternative is viable in the opinion of the people who sit here with us today.

Mr. Collins: Yes, Mr. Black. We spent considerable time in talking about market redevelopment and addressing the issue of how far the market should be expanded, and I think everyone will agree that it is not a definitive science. How can you look up there and say, How many sellers there should be for the number of customers? It is a very very difficult answer to come up with.

As has been mentioned by Mr. Bell, you have to look at the various scenarios. But quite quickly you could take the scenario that you just build another market as you suggested, maybe in your number two suggestion, either in Markham or east Toronto.

Now, we start dividing the number of buyers. Automatically, we are not going to increase the number of stores. Heavens to sake, they are closing stores these days opening these big huge stores. These big huge stores are not buying from the market at all; they are buying directly from the farmer. The farmer members on this Board will recognize that, that the marketing in the fruit and vegetable industry -- and this is what we are talking about -- is certainly in a great state of flux. Decisions that might be made five years ago are not anywhere near appropriate today.

So, we did -- and I think this was mentioned yesterday -- we did delay in the expansion. Taking this in mind -- this is why the Ontario Fruit and Vegetable Growers' Association, the Ontario government, and the federal government put a lot of money -- I can't tell you what it was now, but it was a considerable amount of money, and I

think around \$100,000 -- for this study because they felt it important that we have a study and understand what is happening out there in the marketing field.

So we did delay, and I am going to say we probably delayed about three to four months -- No, in fact, it would be almost six months; we waited until the final report came through last January. So that was a factor.

So we are aware of how far the market should be expanded. We felt -- and staff was charged with the responsibility here and they came back with a report studying the grocery industry, what they felt was happening in that industry, a number of stores and the type of selling. So at that time we felt that eight to ten units, as mentioned here before, would probably be about the right amount to start with. If it seems that that is inadequate, then we will have to take other action.

It has also been mentioned we had to take into account the different types of expansion at the market or redevelopment -- I say redevelopment. We must make the facilities there not only better for the farmer; we must make it better for the seller.

I hear too much around this hearing that we are trying departmentalize the market. This Board under my Chairmanship is going to be a cooperative board. It is going to be a board that thinks of the market not for Ontario farmers, not for A and B units, not for the people who drive trucks into the market to be facilitated; it is going to be a market for the common good.

And we addressed those issues. They are not definitive issues; they are very complex, and I think in drawing up our redevelopment, we looked at all those issues. So please understand that we are trying to think of a total market, total, underscore total.

Now, does this answer your question about how far and why our board has taken this position of believing that a strong central market is better than a divisive market, two markets, and also addresses possibly our reason for saying we think that eight to ten more A units -- they have been called C units, but they would be the same as an A unit as you saw, that we think this is reasonable expansion. It has also been stated that these new units will not be available to existing units -- or tenants.

I have tried to be concise but tried to highlight some of these important points.

Mr. Black: What I hear you saying, Mr. Collins, is that in your judgment then that a second market would not be viable at this time?



Mr. Collins: That is what I am saying. That is the position the Market has taken -- the Board has taken.

Mr. Black: Could I pursue the other alternative. Is there sufficient space on the present site to provide for expansion over the next ten to twenty-year period in the province of Ontario with the growing population that we expect?

Mr. Collins: That question has been asked here this morning and various people have tried to answer it. I can't be anymore specific.

We know that it can go eight to ten. With considerable more difficulty and expense, it can go far, far greater; it can be multi-stored. Now, whether that is terribly efficient or not, I do not know, but we feel we must deal with things that we can reach rather than things that are far down the road that we really cannot get grasp of because I mentioned before -- and it is recognized not only by the fruit and vegetable growers in the province of Ontario and the Minister of Agriculture both federally and provincially, that the whole market is in a state of flux and it would be rather ridiculous I think at that time -- well, not I think; I believe very strongly -- to reach too far down the road in terms of this marketing.

Mr. Nicholas: If I may add just two fast points. The existing site is an ideal site. The Queensway site is ideal for transportation, for the road traffic, the rail traffic, and it also serves the buyers. If you look at the mix -- there is some 4,000 buyers registered -- a lot of them are centered in the Metro area, and that is a key point because they are the people we are serving. So it is an ideal location where it is.

Mr. Black: A couple of other questions. I will try to be brief, Mr. Chairman.

I note that in a new memorandum, a proposed memorandum of agreement between -- or memorandum of understanding between the Minister of Agriculture and the Board, that there is a proposal that the Minister have a representative, a non-voting member or a non-voting person who would attend the Board and sit in on its meetings. Does that proposal receive positive response from the Board?

Mr. Collins: Well, yes because the memorandum of understanding was presented to the Board. I signed it. It was -- it has been accepted by the Board and I signed it.

Mr. Black: Thank you.

Ms. Grier: Mr. Chairman, can we get a date on that because I noticed it is before Cabinet. I wondered when you

had agreed to it.

Mr. Carsley: I believe it was in January or the beginning of February.

Mr. Chairman: It was '87.

Mr. Carsley: Was it? Sorry. Is that --

Mr. Chairman: 1987 it says. It does not say what day, though.

Ms. Grier: It does not say what month.

Mr. Carsley: Okay. Well, then it must have been in the fall then; I am sorry. It has been awhile. We have not got it back yet but the Chairman has signed it and the Board agreed to it.

Ms. Grier: As far as you are concerned it is fine; it's management board --

Mr. Carsley: Yes.

Ms. Grier: Thank you.

Mr. Chairman: Mr. Black?

Mr. Black: And a related question -- and once again I am asking for an opinion from you, Mr. Chairman, or from other members of your delegation.

Would there be some advantages from the point of view of the public, the public perception and perhaps the perception of MPPs, if there were included on your board one or two people who might be -- and before Mr. Runciman reacts too strongly -- who might be identified as consumer representatives or advocates?

I have some concern -- I think it is shared here by other people -- that the Board is weighted in favour of people who are directly involved in the operation of the market, and I recognize we need that element of expertise on the Board, and I am wondering if we also should consider balancing that element of expertise with someone whose main focus is on the consumer at large.

Mr. Collins: Yes. You recognize there has already been some change, the fact that a buyer is there now, the fact that we have our first female on the board and we are very happy with that.

No, I do not think we have any objection at all to having outsiders on the Board. I am sure the government is looking for people, when they make these recommendations to



Cabinet and Cabinet to the Lieutenant Governor for approval, I am sure they are looking for people who have business expertise, knowledge of the business -- well, business expertise.

So not only this board but the one prior board, I feel that this was their reasoning for this, to bring in people from -- not necessarily farmers and not necessarily those that are tenants.

So there is some change, and sure, we have no objection to that and anybody can be appointed.

Mr. Black: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Dietsch?

Mr. Dietsch: Thank you, Mr. Chairman. I would like to just quickly preface my last attempt at questions by saying that I know I as a member of this particular committee and I am sure many of the people sitting around this table recognize the makeup of the Board at this particular time, understanding that the individuals that were involved were not involved with the earlier decisions that were made, and no one here is trying to point the finger at any one of the members that we have as a delegation before us at this time.

The line of questioning, in my belief, is that we are trying to make constructive points for the deliberations of the Board to correct the situation and enhance the operation of the Board to serve the benefit, as I see it, the common good of Ontario.

Mr. Collins: I could not agree with you more, sir.

Mr. Dietsch: Certainly not in my opinion, and I want to make it perfectly clear that Ontario is my first and foremost thought in relationship to selling fruit and selling vegetables, et cetera, on the market. I am not an advocate of off-shore or out-of-country produce on the market. I will tell you that right straight.

I would like to say that under the line of questioning that has taken place, the Board's perception by the users of the market and the individuals is somewhat tainted by some of the perceptions of the individuals involved in the Board over the past years.

And that is not to suggest that there is anything in relationship to happenings that are going on, but when you look at leases in perpetuity for 30 years, renewable for 30, renewable for another 30, I do not know if you are going to be around, but I will consider myself darned lucky if I am around, and I think those perceptions are what has some great impact on the outside.

I would like to suggest to you and ask you a couple of questions in relationship to -- Have you gone through a study in relationship to hours of operation, sharing of stalls or units, the remodification, if you will, of waiting lists? Let me stop there and give you a chance to answer those.

Mr. Nicholas: I can answer. The first one -- at one time there was a system in the farmers market on a trial basis of allowing a sublet of a stall and that system was discontinued for some of the reasons that are even mentioned in this Committee about a sublet of an A and B stall. So that was tried and stopped, and we came up with semi-annual leases. So there has been some examination of that point at least.

Mr. Dietsch: You should not really discount that option based on the reading of what you have in the A and B fiasco because, quickly frankly, there are benefits to learn. Only the perpetuity of the lease is the area that is wrong in relationship to the stalls A and B that I read now.

Mr. Carsley: In the farmers market we have tried to -- we do not want the same scenario developing where people are going to, shall we say, start subletting their stalls for more money than they are renting for.

Mr. Nicholas: Some people will hold on to a stall not even using it, and we are trying to weed those people out.

If you allow a sublet situation, that gets right back into the same thing you are talking about the warehouses. So we took action and eliminated that possibility.

Mr. Dietsch: I am not talking about subletting of stalls that are in relationship to the control of the lessor. I am talking about subletting of stalls in relationship -- Right now if I rent a stall for a year and I do not show up Wednesday morning, you already sublet that stall to someone else and charge the additional going rate for that.

Mr. Carsley: On a daily basis.

Mr. Dietsch: And I am saying that that type of enhancement can still be taken into consideration. There is nothing more frustrating for a farmer who is using the market to be standing outside, paid his \$11 to rent his stall outside, and watching the stall sit empty on the inside, in the rain.

Mr. Nicholas: Sorry; the outside and the inside for other members is within the farmers market, not on the other side of the fence of the terminal. And what you are talking about is a possible implementation of a seasonal pass



affair, which is something that we talked about earlier and said we will look at.

Mr. Dietsch: Right. And I am suggesting to you that the reason I asked the question is I would like you as a board to review these aspects. And the hours of operation, my understanding is that the hours of operation are somewhat difficult based on the larger trucks that are backing in and sometimes plug the gate from people coming in for periods as high as twenty minutes and those trucks waiting on the line out on the Queensway waiting to get in because you only have one entrance, one main entrance to come in.

So what I am saying is, Have you looked at a traffic movement pattern within the farmers market?

Mr. Carsley: We definitely have and we have some ideas in that regard. We were going to test an idea last year but something came up and we did not do it. We have some ideas regarding traffic flow and how it could be improved for the farmers market.

Mr. Nicholas: And a new gate structure is being implemented this summer. That is in place. It just has not been installed but it is all in place, that new gate.

Mr. Chairman: Order, please. Do you have several more questions, or -- if you do, I have to make a statement so that we can find out where we are heading.

Mr. Dietsch: Well, I have about four more questions.

Mr. Chairman: Okay. I am suggesting that possibly we come back at 1:30, if we can adjourn around 12, so that we can deal, in camera, with reports and what direction we want to proceed further.

We would be done with these gentlemen at 12, I would hope, and if we come back at 1:30, maybe we could have a shorter afternoon.

So if you would like to proceed with your questions, then -- I can see now that we are going to have to come back because of the number of questions that you have and Mr. Mahoney.

Ms. Grier: Mr. Chairman, I thought we were scheduled to return at 2?

Mr. Chairman: I am just asking for a consent to return at 1:30.

Ms. Grier: Okay. I am afraid I am not going to be able to at 1:30. I am available for 2, but I have an appointment at --

Mr. Farnan: There is a caucus meeting already arranged from 1 to 2, and we would appreciate it if --

Mr. Chairman: That is fine; that is no problem. We can adjourn until 2 at noon.

Okay. Mr. Dietsch?

Mr. Dietsch: Are we all right?

Mr. Chairman: Yes.

Mr. Collins: Mr. Chairman, may I ask for clarification, please, for our benefit? There is some confusion down here as to whether we are required after this afternoon?

Mr. Chairman: No; no. You were scheduled to be done this morning and that is what we want to stick to.

Mr. Collins: Thank you very much.

Mr. Dietsch: Mr. Black made reference to the study of the overall Phase III with the use of the present market in its totality in looking at the possibility of a further market in another part of Metro. Is that something that would be reviewed by the Board in the very near future, or will it be reviewed by the Board? Will you be looking at that? Will you be asking for a study or have you a study in mind to handle the balance of the Metro area, or is that something that is totally out of the question? I was a little bit confused by that answer.

Mr. Collins: No, it is not entirely out of the question. We have looked at in our market redevelopment, and at this point -- and I think it is in our report -- it says that we do not feel that it is necessary at this time to handle the wholesale trade of fruit and vegetables. But it is not out of the question; it can be brought up at any time.

Mr. Black: And so that Mr. Mahoney can balance off the remainder of the questions, Mr. Chairman, I deal with this last question and that is in terms of what procedure will this Board -- let me rephrase it.

Will this board develop any procedure from this hearing that we have had this morning to take into consideration the points that have been made here today? What will you do as a result of these hearings here today? Do you plan on having a board meeting to draw up a final plan or to enhance a plan for the future? What avenues will you follow from here this morning?

Mr. Chairman: Mr. Collins and Mr. Bell.



Mr. Bell: Mr. Dietsch, I think if my advice were sought -- and I will give it anyway -- I think it is best to wait.

Mr. Chairman: Glad to see you have not changed your attitude.

Mr. Bell: That's right. I think it is best to wait to see what this Committee reports rather than to take the discussions of the last day and-a-half and go and -- There is no doubt -- I do not think anybody has to say -- that the discussions in the last day and-a-half are going to form discussions with the Director, management, and other levels.

But really my experience has been when I sit at that side of the table that governmental organizations that sit at this side of the table wait to see what committees say in their report before they embark on the meaningful consideration and response as required.

Mr. Dietsch: Now, that your advice has been given and it has not been sought, what does the Chairman plan to do with what has taken place here today?

Ms. Grier: He concurs with the lawyers.

Mr. Dietsch: Let me put it right plainly, Mr. Collins, so you understand. I feel very strongly that the Board and the Terminal need a plan, a master plan update, if you will, about what is going to take place in the food terminal in the future. Would you agree with that?

Mr. Collins: Everybody should have that type of plan, exactly. I agree with that.

Mr. Dietsch: And I guess what I would like to hear from you is, Is that what the Board will do?

Mr. Collins: We certainly will look at the report and we will take action. Positively we would get some direction from the Ministry that we work under along with our own expertise, and as we see areas that need to be improved, we will look at all these things. I really do not know how I can answer your question any more specifically than that, sir. I hope you are satisfied with that answer.

Mr. Chairman: Thank you. Mr. Mahoney.

Mr. Mahoney: Thank you, Mr. Chairman. Most of the things I wanted it ask have been asked. But going back just a couple of questions sort of along this line.

I presume what you are saying is that if this committee comes up with a recommendation that there be a function

audit or something of that nature done by an outside agency at Touche Ross or somebody like that, that that might be a recommendation you might concur with.

I would refer you to the function audits that have taken place at Pearson International Airport with regard to similar types of contractual arrangements between a government agency and an end user in the delivery of ground transportation, and there have been a number of function audits that have taken place. Is that the type of thing you are saying might need to be done?

Mr. Collins: I am sorry. I am not familiar with those things that you are talking about. So if you could phrase it more simply, I will be glad to answer you question.

Mr. Mahoney: A function audit would be to audit how the system is functioning in relationship between the -- you have got a contract, you have got a lease, so you have got a lessee and a lessor. So it would be sort of an examination of that by an outside agency taking into account Mr. Bell's concerns about the legal ramifications both for the Board and for the government and perhaps a third party making recommendations as to how they might get out of the mess, really is what it is.

Mr. Collins: That is fine. We will accept those recommendations and we will look at them definitely.

Mr. Nicholas: I think it is important -- I am assuming the Committee knows that the Board since June 3rd, '87, has been in an entire leasing review procedure, and we have been doing that right through up until the current date.

Mr. Mahoney: But are not all 28 leases now signed for 30 years?

Mr. Carsley: Yes, definitely.

Mr. Nicholas: The Ministry has given us the task of reviewing the leasing policies of the board, and this board is in the middle of doing that. They have not completed it because some of the members were not present.

Mr. Mahoney: But I think Mr. Bell's point is that if we try to re-open a lease that has been signed and is now signed for 30 years, we are perhaps subjecting both the Board and hence your request for indemnification and/or the government, i.e. the taxpayer, to some serious legal ramifications -- financial ramifications.

Mr. Bell: That is a concern. Having said that, the lease review is underway, and we would like not to talk about it anymore, and there are some substantive reasons for not doing so, but --



Mr. Mahoney: I raise it because of some comments made by Mr. Farnan earlier that successive governments have done nothing. But the reality is that in 1984 these 30-year lease agreements were entered into. So you are dealing with a whole different ballgame.

If we were back in 1983 when the new lease arrangements were being renegotiated and these conversations were taking place, we had a different game on our hands. But right now we have got 28 people with signed contractual agreements, and if I was one of them, I would be telling you to get lost.

Mr. Bell: With respect, sir, I do not think you were in any different situation than you are now.

Mr. Mahoney: Because of the perpetuity?

Mr. Bell: Exactly.

Mr. Mahoney: All right. Would you agree, and, Mr. Chairman, in your opening remarks you gave a couple of suggestions as to options that the government might have, and one is to negotiate with the tenants some form of compensation for a decrease -- your words are "decrease in the monetary value of the lease." Two is the government could enact legislation to amend leases.

Just to give you a very brief example, the one I used about Pearson International Airport and the limousines, one of the recommendations was that you open up and flood the market with more licences, and therefore you devalue the current licence holders.

Now, of course, that was met from some tremendous response from those people holding current licenses, but is that something you have looked at as a Board or would be prepared to recommend that we substantially look at ways to increase the number of units way beyond the -- virtually double or triple the number of units.

Mr. Righton: That is not so much a legal question. If it is a legal question, perhaps you might put it in those terms.

Mr. Mahoney: I did not see it as a legal question.

Mr. Bell: It is a business question. But I think the Chairman's remarks about the state of the market currently and projected to the future are quite critical. I think, one, before any decision was made on the extent of expansion, would one would have to have a very good handle on where the market is going to go.

Mr. Mahoney: We do not want it --

Mr. Bell: If you double the number of markets and the demand decreases by half, you are sitting with a three-quarters empty facility after a lot of money has been spent.

Mr. Mahoney: So I guess really one of things we might consider recommending is a market feasibility study be conducted thoroughly to determine whether or not there is indeed a market out there. I mean, they do it for major new shopping malls today. You have to have market feasibility studies; it is really not a lot different. The dollars are probably more for the shopping malls.

So I would think that a market feasibility study on the expansion should be something we would be recommending. Would you agree with that?

Mr. Collins: It is a possibility sir, yes.

Mr. Bell: Provided it did not interfere with the current plans for expansion. By the way, "interefere," I mean delay or otherwise impede.

Mr. Chairman: Would that not be part of what you are doing now when you are reviewing the lease?

Mr. Mahoney: Well, the current plans for expansion are Phase III of the program that you reviewed, and I would see no reason to hold up the expansion of eight or ten units pending the results of a market feasibility study that might come up with recommendations saying you can take another twenty.

Mr. Carsley: Well, I quite agree. We do not want to delay. It is delayed so long now, and these studies seem to go on forever and --

Mr. Mahoney: I am not suggesting a delay at all.

Mr. Dietsch: A subsequent question to that, Mr. Chairman. My understanding was you now have approval to go ahead. You have you got all that. Why would you want to delay it?

Mr. Carsley: I am suggesting we do not wish to delay it. Otherwise it would just continue --

Mr. Mahoney: Okay. I understand that. The final question I have is that Mr. Bell made a comment with regard to the protection of family business who have signed leases and that have had these leases for on-going periods of years. Do you have any concern either from a legal point of view or from the Board's point of view, of a family business



that might have been operating for 15 years on a sublease and has now got a gun to their head with regard to either paying a million bucks to buy the lease out or continuing to pay \$60,000 a year in perpetuity to a paper landlord. Do you have any concerns about that as a Board?

And while we are talking about all of this and reviewing it and coming up with Committee reports, we have people out there who are literally being put out of business. Can you make a recommendation as to how you might defer that what seems like an inevitable problem, allow some breathing space for these particular individuals?

Mr. Collins: Mr. Chairman, as has been mentioned before, we have addressed the question of subletting. We have strongly suggested to the Ministry that the subletting be controlled in some manner. I do not think we need to go over that again.

Mr. Mahoney: I am not asking you that.

Mr. Collins: So we are concerned about that.

Mr. Mahoney: By the time we deal with that long-term problem, we have got some people out in the street. That's what I am --

Mr. Collins: Was that not one of your questions?

Mr. Mahoney: No.

Mr. Collins: You said, do we have some concern over the subletting issue, and we certainly do.

Mr. Mahoney: No, that was not my question. My question was, Do you have -- if you listened to me.

Mr. Collins: Yes, I was listening.

Mr. Mahoney: My question was, Do you have concerns about the specific instances that exist? Now, today while we deliberate and you deliberate and the Minister deliberates, there are some current situations that are very volatile and involve long-term family businesses that are going to be put out of business as a result of the subletting problems. I understand your position on the long-term problem and appreciate it.

Mr. Collins: No, I was addressing -- I was answering the immediate problem. We have some concerns.

Mr. Mahoney: Do you have any suggestions as to what can be done?

Mr. Collins: I think I just told you, sir, that we

suggest that the leases be altered in some manner that will restrict the subletting. I can't say any more.

Mr. Righton: Mr. Chairman, I have a comment which might be helpful put if I could put it on the table, so to speak.

Mr. Chairman: Mr. Righton?

Mr. Righton: You should bear in mind that all of the leases, the 28 leases, have been amended to provide for a new method of calculating the amount of the rent on a break-even basis, and that includes the leases that have been subject to sublease. So that the sub-tenant, in terms of the amount of rent that he must pay, has got to be at least equal to the break-even.

So I presume that the overage, if you will -- you are suggesting that in the present time, bearing in mind the change in the leases, there is a suggestion that the present head lessors are charging a premium, if you will, over and above the break-even formula. The time has changed --

Mr. Mahoney: Well, they are doing that, but I am not asking that the Board or anyone wipe that out in one broad brush. I am wondering if it is possible to implement some kind of a freeze on the situation there to allow the status quo to carry on and those subtenants to continue paying the rents they are paying. Whether they are an exorbitant or not has not totally been determined. I mean, it seems pretty obvious, but can things carry on for a matter of the two or three months that I am afraid it is going to take us to come to grips with this.

Mr. Righton: My only point, sir, is that the spread between the amount being paid by the sub-tenant and the amount being paid by the head tenant to the landlord is not what it was when the head lease formula was minimal. The vice is not quite as bad now as it was in days of yore.

Mr. Chairman: Thank you very much. I want to take this opportunity to thank you, Mr. Chairman, and your delegation for appearing before our committee. I also want to thank you for the interest shown yesterday morning when we visited the Ontario Food Terminal. It was a delight to see and see it in your operation. We thank you for your hospitality there in the morning.

We will be making some recommendations, I am sure, and you will get a report when it is finalized.

Once again, thank you.

Mr. Dietsch: Mr. Chairman, for the record I think it might be important to point out that after we write the report and a reasonable period of time goes by, we may wish



to call the Board back before us again as an update as to what has taken place in response to the report.

Mr. Chairman: It is always the right of the Committee to do that if we feel we need more information.

Thank you.

The committee adjourned at 12:03 p.m to be resumed in camera at 2:00 p.m.





STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO FOOD TERMINAL BOARD

WEDNESDAY, APRIL 13, 1988

STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Miss Martel

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

McLellan, Ray, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Agriculture:

Collin, Dr. George H., Assistant Deputy Minister, Marketing and Standards

Dombek, Carl F., Director, Legal Services

Young, Pamela, Executive Assistant, Marketing and Standards



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, April 13, 1988

The committee met at 10 a.m. in room 228.

AGENCY REVIEW

ONTARIO FOOD TERMINAL BOARD

Mr. Chairman: I call the meeting to order. This morning we are going to be dealing with representatives of the Ministry of Agriculture and Food. For the committee's information, they may recognize Ray McLellan, who is with us this morning. He will be taking over as researcher when John leaves.

Dr. Collin, would you introduce who you have with you this morning for the record? I understand you have a small presentation to make.

MINISTRY OF AGRICULTURE AND FOOD

Dr. Collin: Yes, if I might, I would like to take this opportunity to introduce myself, Dr. George Collin, assistant deputy minister of marketing and standards, which has two divisions, one, the marketing division, and the other, the quality standards division.

My colleague this morning is Carl Dombek, solicitor and director of the legal branch of the Ministry of Agriculture and Food. We also have some staff people here to assist, if needed, but I imagine Carl and myself will try. I make one apology, if I may. The individual who is our regular contact with the Ontario Food Terminal, our director of fruit and vegetable inspection, Jim Wheeler, is not able to be here today, but is in touch by telephone if we need to get any additional detailed information. Unfortunately, he had a prior commitment with the Ontario Grain and Feed Dealers Association and advisory committee, which was a long-standing commitment. My apology. We should be three here today, but we are two with our support people.

Douglas Arnott phoned us last week and asked if we would prepare to come before your committee to address two points: first, the ministry's relationship with the Ontario Food Terminal Board; and second, the ministry's viewpoint on the concerns that have been raised at the three sessions of your hearing. To facilitate your process, I would offer to talk, first, about the ministry's relationship in three areas, which may assist you in understanding what the ministry's responsibility and relationship is to the Ontario Food Terminal and its board.

I would like to talk about three areas of activity that we have in the ministry in relationship to the board. The first is board membership, because it was an issue discussed. I would like to talk a little bit about how the membership of the board has changed since Mr. Dombek and I became involved in the Ontario Food Terminal, roughly in 1985. We propose to talk very briefly about the process of recommendations of board membership to the minister.

The second issue we would like to talk about is the issue of the standing memorandum of understanding between the present and past chairmen of

the food terminal board and our current minister, since 1985, Jack Riddell. That is the second point we would like an opportunity to explain.

Third, probably the most important part, where Carl Dombek will probably be of particular assistance, is the issue of having and conducting annual meetings with the executive of the Ontario Food Terminal Board, in front of what we call our ministry's senior management committee, chaired by our deputy minister, attended by three assistant deputy ministers and people such as Carl Dombek; those kinds of policy people are involved in that.

Those are the three things I would like to talk about, if I may, about relationships, and just bring you up to date. Another thing I would like to talk very briefly about is the concern of our ministry and its mandate and relationship with the Ontario Food Terminal and its activities. I do not intend to take any time on it at all, but if I may, I would like to give reference to a document you might find useful. It is a study just completed in December 1987, Ontario Fresh Fruit and Vegetable Industry Marketing Study. There is a section on the Ontario Food Terminal and a specific recommendation of this study undertaken by the Ontario Fruit and Vegetable Growers' Association, which I would hope give the committee a broader view of the ministry's interest in marketing fruit, vegetables and flowers, and the relationship to the terminal.

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Those are the four points I have proposed to cover very briefly, if that is your interest. May I proceed?

Mr. Chairman: You may proceed.

Dr. Collin: The first issue I would like to talk very briefly about is the Ontario Food Terminal Board's membership. The Minister of Agriculture and Food (Mr. Riddell) initiated a very detailed review of the board's membership in the summer of 1985. Subsequently, in October 1985, Mr. Riddell approved the recommendations of staff for membership on the board, which saw a very major change in membership whereby five of the six board members became newly appointed members of the board.

In October 1986, the ongoing chairman, Doug Williams, completed his final year of chairmanship and the gentleman you met with mostly last week, Allan Collins, after one year's experience on the board, was made chairman of the board. Our last and latest recommendation is dated December 15, 1987, when two new appointments were recommended and passed by the minister to complete a new board for 1988. I would like to put it in context that in 1985 when we first became involved in the Ontario Food Terminal Board, membership was a chairman, Doug Williams, three producers and three dealers.

The board that is just now completed for 1988 is somewhat different in makeup. It has a chairman, Al Collins. I think Mr. Collins introduced himself well to the board as being a producer and an individual very much involved with policy and marketing of fruits and vegetables in Ontario. He certainly represents a grower's interest. There are three producers: Keith Collver, who is manager of the Norfolk Fruit Growers' Association and has the interests of growers and particularly a knowledge of marketing fruit and vegetables; John Lum, who is a farmer who markets as a farmer on the farmers' market at the food terminal; and Grace Dekker, who is a flower producer and markets on the terminal.



In fact, we do have representation of a chairman and three producer-seller members on the membership. There are now two dealers. The old board was structured with three dealers. You met the vice-chairman, a very knowledgeable gentleman, Joseph Melara--he attended your three sessions last week--and Wayne Giles, who is also a dealer-representative on the food terminal. The minister has introduced one new component to the membership of the board, and that is Charles Coppa, who represents a retail buyer on the market.

Ministry staff and the ministry do get very much involved in discussing with the food terminal, the industry, the membership of these boards and proceed to make recommendations to the minister, who considers and makes a final decision. The final decision in 1988, after three years of a significant change in the board, is a board with a chairman, three producers, two dealers and a retail buyer.

Mr. Chairman, I offer to stop at that point for your comments or directions.

Mr. Chairman: Could we have a clarification? You said you became involved in 1985. What were you referring to when you said you had just become involved? Were you not involved before that, or was there not involvement before that?

Dr. Collin: I am talking about my personal involvement.

Mr. Chairman: Oh, I see.

Dr. Collin: In April 1985, I undertook my present responsibility. In July 1985, our deputy arranged a tour of senior management of the Ontario Food Terminal in response to the Ontario Food Terminal Board's request for consideration of additional funding for an extended farmers' market, roof and parking area. That is when I first became involved.

Mrs. Grier: My questions are more on the latter parts of the presentation. I would prefer to hear the whole presentation and then get into questions, if we might proceed that way.

Mr. Chairman: I would be pleased and I think the committee would probably agree with that. I thought he was done.

Dr. Collin: No. I have three or four other points.

Mr. Black: Mr. Chairman, I have a question or two that relate particularly to membership. I can hold them, if you would prefer, but it might be appropriate to do them at this time while we are dealing with that topic.

Mr. Chairman: No. I think we would be better to hold them and let him make his total presentation.

Mr. Black: Fine.

Dr. Collin: The second issue I would like to talk about comes out of the membership. This is the memorandum of understanding and is required by a schedule 2 agency. There is a requirement that the minister have an updated, signed memorandum of understanding between the chairman of the schedule 2 agency and himself.

I have been involved in two memorandums of understanding. One is February 3, 1986, signed by the Minister of Agriculture and Food and the then chairman, Doug Williams. We have a second memorandum of understanding that was discussed--Mrs. Grier, you made mention of it--last week, the present one, which was signed on January 4, 1988, by Mr. Riddell and Al Collins.

The memorandum of understanding is a document that sets out by introduction the powers of the board, makes mention of the act and then proceeds to talk about the role of the minister. In that, it has some six points of responsibility of the minister, the roles of the board and the responsibilities of the board.

The third section is the financial arrangements whereby the board is required to come back to the minister, to the ministry and to the Treasury before undertaking any liability for sale of property. The last part is the administrative relationship issues of audit and financial report. There was a question last week of where this memorandum of understanding was.

I make a point that the memorandum of understanding is up to date, signed by Jack Riddell and Al Collins, dated January 4, 1988, and it has been recorded by minute of Management Board on March 8, 1988. There was a question of where we stood.

The issue may raise some of the issues of mandate and what, by policy, the minister wants and by program, what the ministry expects out of the Ontario Food Terminal, but we can come back to that point. The last point on the relationships between the ministry and the Ontario Food Terminal Board is the issue of annual meetings at the senior management committee.

Our deputy, Dr. Clay Switzer, in July 1985, initiated a process of annual meetings whereby the executive of the Ontario Food Terminal Board came forward in each of 1985, 1986 and 1987 to present its budget, its long-term plans and its concerns about such things as the act itself and the regulations under the act.

For your record, I would that the first meeting, to my experience, occurred on July 16, 1985, with a tour of the food terminal and a review of the board's plans in regard to improvements and expansion of the food terminal. One thing that was discussed was the proposal and request for funding of the expansion of the farmers' market by extending the present roof. As you recall, the roof provides the secondary parking and the proposal was to extend that roof to cover a larger area of the farmers' market.

The second year, 1986, involved two meetings with senior committee. The first one was on February 19, 1986, and the presentation was a review of their proposal for new units, and specifically the review of the Ontario Food Terminal Act, especially regulations 703 and 704. My colleague followed that up with a detailed meeting with the board on the issues of those two specific regulations, 703 and 704. Following that, the budget was presented to the minister, Mr. Riddell, on February 21, 1986, as a condition of the memorandum of understanding.

By 1987, I think both the ministry and the board began to focus more clearly on the priorities and the issues before the Ontario Food Terminal Board. There were two meetings involved. I think some of the research documentation gives reference to the correspondence between the board and our



deputy, Dr. Clay Switzer. These two meetings were on June 3, 1987, and the issue was the proposed new C units. From that, the deputy, by letter, as was recorded last week, asked the board to recommend a policy for leasing the proposed eight or 10 C units that were proposed for construction.

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In answer to that request, the Ontario Food Terminal Board returned to the ministry's senior committee on October 7, 1987, and presented to the senior management committee a policy proposal for the leasing practices of the new eight or 10 C units that were accepted by the ministry.

Subsequent to that, there was an additional meeting to address what the ministry considered the priority, which was to proceed with the planning, construction and detailed architectural plans for the new eight or 10 C units. I am sure you want to come back to some of that detail.

The last point, if I may, I would like to put in the context of where the Ontario Food Terminal sits in the ministry's long-term plan to ensure orderly marketing for fruits and vegetables in Ontario. If I may, I would like to make reference to this document. I apologize that I do not have enough copies. I will leave this with the committee.

Mr. Chairman: Would you have a copy for every member later on?

Dr. Collin: We could try, or the two areas that are important to the committee could be photocopied by either us or your clerk, I am sure, whichever you prefer.

There are two areas to which I would like to make passing reference. On page 143, for the clerk's interest, it says the Ontario Food Terminal provides a market for 19.5 per cent of the Ontario produce sold in the province. I would like to emphasize that it is one of the markets. It is important from the ministry's point of view to have a diversity and as many markets as possible, but I would emphasize that approximately 20 per cent of the Ontario produce is, in fact, sold through the Ontario Food Terminal.

In this very heavy document, which addresses the needs of marketing fruit and vegetables in Ontario, there is only one recommendation that the industry has addressed to the ministry regarding the Ontario Food Terminal. That is recommendation 11 on page 13. It is a very simple recommendation and I think it is a very significant recommendation.

This study that was initiated in the summer of 1985, co-funded by the federal Department of Agriculture and the Ontario Ministry of Agriculture and Food and in fact managed by the Ontario Fruit and Vegetable Growers' Association, which is the representative group of all fruit, vegetable and flower producers in the province, made this recommendation to the ministry. It is recommendation 11, page 13:

"That the Ontario Ministry of Agriculture and Food review the intent for which the Ontario Food Terminal was established and the manner in which it is presently being used by the industry and ascertain whether the terminal's operation serves the best interest of the food and vegetable industry."

I just give that in the way of background of this very detailed study undertaken by the industry in Ontario. There is only one issue that is addressed to a terminal market, if I can say that, and it is simply that the

ministry should review the intent of that terminal market with regard to programs of the ministry.

I talk far too fast. I have covered probably a lot of ground but I have tried to segment it into four areas: the membership of the board; the memorandum of understanding; the process of review of policy and program that the ministry has undertaken in 1985, 1986 and 1987; and the fourth point, which I think the committee should take in context, that the industry itself has undertaken a very detailed study of marketing of fruits and vegetables and flowers in the province.

It is taken and tabled in this document, which I might say has not been officially presented to the ministry at this time. The industry is still meeting and deciding the sense of the priorities of the recommendations. This was, in fact, publicized and presented publicly in December. The industry has still to come to the ministry and the minister to say the sense of priorities of the needs of the industry.

I appreciate your patience. Maybe it does help you a little bit if I try to approach it with those four steps of the involvement of the ministry.

Mrs. Grier: That was a very logical way of doing it. I appreciated the brevity and the organization of your submission.

I have a lot of questions, but let me start with a few. I guess the primary problem I have been wrestling with is where does the responsibility lie primarily for this whole issue of the perpetual leases? I am sure you are familiar with the recommendations of the 1979 legislative committee.

It is not clear from the submissions that were made to this committee by the members of the Ontario Food Terminal Board or, quite frankly, by the responses of the minister to questions on the issue, whether the board has the power to stop the perpetual leases but is not doing so because it is worried about indemnification should there be some legal challenges, or whether the ministry has the power to change the leases. Where does that responsibility lie? Do you agree that the perpetual leases are a problem and, if so, whose problem are they?

Dr. Collin: I would like to try to start off by answering it this way. This issue of perpetual lease has been discussed very carefully at the Ontario Food Terminal at the senior committee for three years. The sense of priority is that the perpetual lease over the three years has become more recurrent and addressed more carefully as a problem.

I think the last instruction of our deputy was by letter to Mr. Allan Collins to undertake a full review of the leasing policies that the board does have in place. I take it really that you can put it this way, the ball is now back with the Ontario Food Terminal Board to review with its solicitor the issue of perpetual lease and all its leasing policies.

Mrs. Grier: Let us just concentrate on the existing A and B units and those existing leases. As I understood the submission we had from the Ontario Food Terminal Board, it was saying it was unable to do anything about the perpetual leases without a change in legislation or without a guarantee from the ministry that they, both personally and as a board, would be indemnified for any legal costs or suits that might be launched against them. Are you now saying that, in fact, the ball is in their court and that is not the case?



Dr. Collin: Could I refer that to Mr. Dombek?

Mr. Dombek: Perhaps I can be of some assistance. The committee in 1980 received a legal opinion from Mr. McMurtry, the then Attorney General.

Mrs. Grier: Which committee?

Mr. Dombek: The standing committee on procedural affairs, which studied the food terminal.

At that time, there were really two or three options. The first option was one in which the board would renegotiate the existing agreements and address the issue of perpetual renewal in those renegotiations. That is strictly a matter between the board and its tenants. The ministry does not have any input into that except perhaps to give some general overall direction as to what the minister feels is good policy in the 1980s.

The second option that the opinion gave was one of expropriation; that is, the crown would use some of its general powers of expropriating the leases or the property. As such, in effect, those perpetual renewals would come to an end.

The third option, of course, was for the Legislature to pass legislation that would do away with the perpetual renewal right found in those leases.

Those were the three options involved. The opinion, and I think this was indicated by Mr. Bell, was that if the second and third options were to go ahead, the province could be looking at a substantial payment of moneys to the leaseholders. The reason for that is that the leaseholders have this right. Whether it was given to them rightly or wrongly back in the mid-1950s, they have this right and they would be entitled to compensation.

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The amount of compensation obviously would have to be appraised, but it could run into a very hefty sum. I believe Mr. Bell in his testimony before this committee last week or the week before indicated that he would rather not get into that in the event that the Legislature did expropriate the leases, because then it would become a matter of negotiations between the board and the leaseholders as to the amount of compensation that would be paid. But I think we can be perfectly frank, in the sense that it would cost a considerable amount to get out of those particular leases.

I guess my answer to your question is this: Of the three options, the option that seems to be the most viable, without getting into a lot of extraneous detail, bringing legislation into the House or going through the cumbersome route of expropriating, would be for the food terminal board to negotiate or renegotiate the leases.

They have a problem because it takes two to tango in this particular aspect, and back in 1984 when the leases were coming up for renewal, the board, in its wisdom, at that time did not address the issue of perpetual leases. I understand from my conversations with the present members of the board and in reviewing some files that we have in the legal branch, the issue that was most important was to get the food terminal operating on, if not a profit basis, at least a break-even basis. The leases in 1954 were very one-sided for the benefit of the leaseholders in the terms of rent and also in the terms of the renewal.

Consequently, a decision was made by the board members at that time as to what direction they should go. Should they get the terminal operating on a break-even basis? Was that the first priority, and then, hopefully, to deal with the perpetual lease problem, or should they deal with it all?

When I, as a leaseholder, have a certain right to effect the renewal of that lease just by giving you written notice, I have you over a barrel, and I think the board found itself in that position. Consequently, I think their negotiations in 1983 and 1984 were probably well timed to at least get the food terminal board on a break-even basis, which I understand that it is today. So they left the issue of perpetual leases.

Just in the way of background, in my review of the history of this matter this is not a new problem. Not only did the standing committee on procedural affairs deal with this issue back in the late 1970s or early 1980s, but it was also a problem that we knew--at least, from the files that I have in my legal branch--existed back in the mid-1970s. Various ministers at that time knew this was a difficulty and felt that times had changed sufficiently that the food terminal should somehow try to get itself out of this arrangement because it put them into a very poor economic position in dealing with the leaseholders.

Mrs. Grier: Given that that presumably is still the opinion of the ministry and that the leases were renegotiated in 1984 and that now the financial problem has been resolved, what does the ministry intend to do next to deal with the problem?

Mr. Dombek: I think Dr. Collin has pointed out that in its last presentation to the senior management committee of the ministry, the food terminal was given some directions by the deputy minister to review the area of leases, its leasing policies, not only in relation to the new leases but also the existing leases. They were also told that they should be reviewing the Ontario Food Terminal Act, that they should be sitting down with their solicitors with a view to bringing this legislation, which was first enacted in 1946, up to date and perhaps that may be the direction they are going.

The last conversation that I had seemed to indicate that there was a review proceeding on the act and I believe there was also a review proceeding on the leasing policy.

What we would expect from the food terminal is to come forth to the minister and to present him with--we know what the options are--a recommendation as to what is the best alternative; how the province is going to get the best bang for its buck and how should we go about doing it.

Mr. Black: May I ask a supplementary before we leave that topic? Is it realistic to expect that the food terminal board, which is composed primarily of people in the industry and very much, if I may use the expression, a family affair even with the new makeup, can or would be able, realistically, to negotiate itself out of a pretty good financial situation? It seems to me that we are asking a lot of the food terminal board.

Dr. Collin: I think you make a fair point. In my experience in working with these kind of board memberships, I think there has been a real concerted effort on behalf of the minister to get a new balance on that Ontario Food Terminal Board. I go back to my summary point. From a very simple structure of three producers and three dealers who have a very definite interest in the policy of the board in regard to lease policy, the minister has now reconstructed that, in fact, have in effect four producers, two dealers and one buyer. That may be enough to bring the process together.



One alternative that was looked at was to restructure the board and ask the board to, in fact, deal with the farmers' market by an advisory committee or a subcommittee of the board and to deal with the dealers with a subcommittee of the board.

The judgement, in talking about it and on the basis of our experience, was that we recommended to the minister that the dealers should be represented on the board and should be fully involved in the discussion in the evolution of policy that would be recommended to the minister, if I can make that addition. The minister does not necessarily have to take that recommendation from the board, as I understand it, as Mr. Dombek has said, if he does not, then there is a sense of government liability to decide where to put its monetary resources to be most effective.

I guess there has been a lot of process and thought in this regard of why do you have a membership on the board and how should it be responsible? The responsibility of the board is very clearly spelled out in the memorandum of understanding and it is, specifically, to accept the policy recommendations and decisions of the minister and implement those.

This is why we are engaged in the process that Mr. Dombek points out. The deputy has asked the board to come forward with a new policy for leasing the eight to 10 new C units. The board has done that. It has addressed the issue of how many units an individual company can control under the policy for the new units and the minister and deputy have also said: "Now that you have taken that step, you better try to be in some way, in a sense, consistent. What are you going to do with the existing perpetual leases for the A and B units?"

The board then is very much challenged to address this problem and the deputy has said, "Address it and give us a policy recommendation that would, in fact, be taken back to the minister with a list of options." I am sure you know how the bureaucracy works. We simply, in fact, look at all the viable options and try to talk about the pros and cons of each recommendation. Then the minister makes his decision and makes a recommendation.

That is really where we are on your additional question. There is a judgement to restructure the board, bring in a sense of new perspective on the board and get a new balance.

I know from reading the transcripts the committee looked at it quite a bit and did question the membership of the board. As a bureaucrat, I very much appreciate this discussion and what you think about that issue of membership on the board.

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Mr. Chairman: I think that clarifies the supplementary that he had. Mrs. Grier, you continue.

Mrs. Grier: Just let me say that certainly the conclusion I have come to is there is too much interrelationship among growers, producers and dealers for you ever to make the assumption that merely because someone on the board is a producer he can deal objectively with an issue that concerns the wholesalers. Who do the producers sell to, for gosh sakes, and on whom are they dependent for an awful lot of their business? So we have to move away to a board that is at arm's length from the business if we are ever going to come

to grips with some of the issues, but I cannot wait that long to come to the issue of perpetual leases, and I hope you will not either.

I want to turn to the question of the new leases. Did I understand you to say you had now agreed with the board on the formula for the new leases for the new units?

Dr. Collin: It is agreement on the basis of the very general presentation that the board made back on October 7, 1987. Two aspects of the recommendations of the board to the ministry dealt with the issue of new leases of the so-called eight or 10 C units. The ministry--and I use this word "ministry"--has endorsed that policy and asked the board to proceed to refine it and to proceed with priority to complete the planning and construction of the new C units. On a very pragmatic point, that would be our priority at this point, to get on with this new policy of leasing for the C units, complete the planning and get on with the building of the C units. That would be our priority as a ministry at this point.

Mrs. Grier: My concern is that the lease of the C units, as it appears to be contemplated by the board, may merely be establishing yet another problem for some future committee of the Legislature to deal with because we are talking about, in new units, a 25- to 35-year term. I am wondering what action you see the ministry taking to make sure that we do not perpetuate perpetual leases.

Dr. Collin: With due respect, Mrs. Grier, I do not see anywhere in the proposal of the Ontario Food Terminal Board the danger of the perpetual lease in this regard. There were two articles that were addressed under the leasing for C units, and there is a very specific determination the lease will not have a perpetual term, and the board will have the right to increase rents at its discretion. So there is no danger of a perpetual lease creeping back into the new C units, as I read their policy proposal. It is not implemented into the details of the procedures, but their very broad outlines of policy I found very acceptable and the ministry and senior management found acceptable and showed little danger or threat to fall back into a issue of a perpetual lease.

Mrs. Grier: What about the issue of the selection of tenants for the new units? Are you satisfied that this is going to be as open as possible?

Dr. Collin: This was discussed with the board, and I smile. This is an issue of concern that the ministry has many times about the issue of new entrants. We have cautioned Ontario Food Terminal Board to think out very carefully its procedure to select new tenants. We have not taken a position.

Mr. Chairman: You probably have several other questions, I am sure.

Mrs. Grier: Just a couple.

Mr. Chairman: Just a couple. I was wanting to move around.

Mrs. Grier: I do not want to monopolize. I had four, and I am on my third.

Mr. Chairman: We will come back to those in a little while. Is that OK?



Mr. Black: I would like to return, if I may, to the makeup of the board. Earlier, we raised the question of whether there should be room for a consumer representative or citizen at large. In view of what I am hearing now, I am beginning to think differently, that perhaps we should be looking at more than just one citizen-at-large appointment to that board.

Really, what we are asking the present board of directors to do is to serve two functions, to be an objective board of directors but also to be an advisory committee. I see that as a situation that places them in a conflict, and I suspect contributes to some of the problems this committee feels exist. I would like your views on that, that there might be some consideration given to an expansion of the board with some deliberate intent to make it a more objective organization that could look at not only the needs of the growers, the producers and the retailers, but also the citizens at large in this province.

Dr. Collin: Mr. Dombek is very helpful. He reminded me that the condition of the act limits it to private members. The sense of representation you offer would, I guess you are saying, Carl, have to address the limits of the act.

Mr. Dombek: Subsection 2(2) of the Ontario Food Terminal Act says that the board is limited to seven members, so you have to work within that framework. Assuming that your chairman is always going to be an independent individual, that means you really have six players to work with. The problem you raise is one that was signalled to the board at its presentation to the ministry at the senior management committee. In reviewing its presentation on October 7, 1987, like yourselves, I was somewhat concerned as to the individuals who were voting on the issues of perpetual leases and so on.

We discussed that matter at the senior management committee with Al Collins, Mr. Carsley and so on. I have to give Mr. Collins a great deal of credit here. He asked me if I would raise the issue to him in writing so that he could take the matter back before the board and get independent legal advice from its solicitors. Consequently, on October 9, two days after the meeting, I wrote to Mr. Collins. I expressed my concerns and I suggested that he might want to raise the issue with his solicitors to get a legal opinion on it.

I should point out to the members that there is a new Manual of Administration for the operations of agency, boards and commissions that has been sanctioned by Management Board. Part of those guidelines deal with the conflict-of-interest provisions in agencies and for those people who are sitting on agencies. The guidelines define conflict of interest in the following way: "Conflict of interest normally relates to a direct pecuniary interest of the appointed or elected member, either personally or through the member's family.

"Direct pecuniary interest should be interpreted as an individual interest rather than one that is common to a class of persons. That is to say, it is not considered a conflict of interest if a large segment of the population, including the member, will benefit from a decision to which the member is a party. However, there is--the word "is" is emphasized in this--conflict of interest if the member or his or her immediate family could benefit personally from a decision while a large group of people could not.

"Immediate family should be interpreted to include the spouse, parents or children of the appointed or elected member."

They then suggest a certain practice that the members of the board should follow and they deal with the issue of quorum. If sufficient members of the agency have to declare a conflict, basically, the procedure is that you would declare the conflict and you would refrain from any further participation in the discussion. I think the guidelines are fairly reasonable, fairly responsible. They do raise the issue that perhaps the agency in this particular case should be following.

That is not to say anything against your suggestion that other parties or persons outside of sort of the incestuous group, if you want to call it that, of the food terminal should not be appointed members. I am sure that is a suggestion from this committee that the minister will look at wholeheartedly.

Mr. Black: All right. If I may move on to a second question, in your memorandum of understanding, at least the draft version that we were shown, there was a request in there that a representative of the Minister of Agriculture be appointed as a nonvoting member to the board. Is that contained in the final and signed copy of the agreement?

Mr. Dombek: Yes, it is. Perhaps I can deal with this. Again, the ministry is following the guidelines of the Manual of Administration and the relationship that we should have. There are sections dealing with public servants on the agency boards. Basically, the manual suggests that it is not a very good idea. They should not be in the position of being voting or nonvoting members and so on. In reviewing the history of the food terminal board in my files, I have been able to find only one situation where a member of the ministry attended meetings, as more of a conduit for information between the board and the minister, and that was from 1977 to 1980. The person who attended the meetings at that time was John McMurchy, who was a solicitor in the legal branch. The records I have indicate he reported dutifully to the then assistant deputy minister and also to the minister as to what was going on.

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The exceptional circumstance at that time that necessitated Mr. McMurchy's involvement was the potential move from the present location of the food terminal in Etobicoke to Vaughan township. As part of that, while the board was getting its own independent legal advice from its law firm of Shibley, Righton and McCutcheon, Mr. McMurchie was involved--not involved, but interested in the leases, the transfer of the leases, the perpetual renewal of the leases, the acquisition of the property, the sale of some surplus property and, I guess, the final sale of the property in Vaughan after the board decided not to move.

At that stage of the game, there was a new chairman appointed, Mr. Williams, and it was suggested at that time that it was not necessary for the ministry to have an observer there. But it is always good to have that authority in the event that some extraordinary situation might occur which would necessitate a little bit more direct involvement.

Dr. Collin: Could I just add an administrative point? You have had a legal point of view. From an administrative point of view, we have had ministry staff appointed to various boards, and I want to name them. As Carl has said, the intent is to provide the conduit back into the ministry.



They really have not been very successful, because the individual sitting on that board, I feel, is many times taken advantage of. He is often very much outnumbered. It is not a very effective relationship between a board and its ministry.

What we have purposely tried to put in place for this particular board is what I define as having a contact person with the board, Jim Wheeler, fruit and vegetable inspection branch, who does have employees located at the Ontario Food Terminal. He has a very active interest in it and has his ear to the ground, if I could say that, from the point of view of the producers and users. But more important is the process that we initiated in 1985 and carried through in 1986 and 1987, where there is a formal presentation by the food terminal board to our senior committee of the ministry, chaired by the deputy, assisted very ably by policy people and by legal people. There is much better give and take and a very critical evaluation of the board's long-term plans, its budgets and its requests of the ministry. It is much more effective than having a ministry appointee, as Carl said, provide the conduit back, wherever, to the minister, the ministry or the deputy.

I think the process we have, which I would endorse very much, does give a very analytical review of what they propose in a business plan, a long-term plan, a budget and a request of the government.

Mr. Furlong: They tell me that if something is said on the record and it goes unchallenged, some people have a tendency to accept it as being fact. I would like to say two things. First of all, I think I heard counsel say that in 1984, when the leases were renegotiated in part, he felt the leaseholders had the upper hand. I would certainly challenge that. I think there were a number of other options that the board had that it could have used. It strikes me that perhaps there was no real desire to get rid of the perpetual leases.

I would also like to indicate that in 1979 or 1980, when the last report was submitted, I assume the ministry received copies of that report and I assume that it--well, I will ask the question. Would the ministry have taken any kind of action in terms of making recommendations to the board to say, "Can you do anything to implement some of the recommendations of the committee?"

Dr. Collin: Quite honestly, in being prepared for this meeting, we have not researched back into files of 1979 or 1980. It is an oversight on our part. Carl has gone back further. Beverley put my emphasis on the files of 1985, 1986 and 1987. I really cannot help you on that.

Mr. Furlong: You indicated that, I believe it was in 1985, a process was begun by which the board was to meet with a committee separate from your ministry on an annual basis. That did not take place prior to that?

Dr. Collin: My understanding, and we have tried to trace it, is that the conduit system was used, as Mr. Dombek explained. When Doug Williams was named chairman, he was at that time a past employee of the ministry and very familiar with the ministry operations and familiar with the minister. I suspect it was a conduit process that was used in that time and that probably Mr. Williams provided the conduit, as Mr. Dombek as illustrated. That is an assumption, but I must admit I have not tried to trace back through the files I have access to.

Mr. Furlong: It appears to me, when I look at the last report and hear the questions that are being asked this time, that the one major problem is the perpetual leases and that some people who are using the facility have to pay exorbitant rates to lease space from an original leaseholder. That seems to be the major complaint.

It strikes me that one of the solutions would be to increase the number of units that are available. Has the ministry had any discussion with the board on expansion, either on the existing site or to move to a new site?

Dr. Collin: That is one reason I introduced this report, because if you look at the chapter that deals with the food terminal, it really does say there is a risk that the activity of the terminal market will probably decline in the future as other ways of selling produce and product, for example, directly to the distribution centres of large retailers, are built up. The process of making a very large capital investment to provide new terminals or additional units at the present terminal could, in a few years, find us again with an underutilized facility.

It is really a judgement. It certainly is an option that should be listed when the issue of perpetual lease is defined, either by legislative action or by negotiation. On the basis of this report, I would be very cautious in my recommendations to the ministry to make that kind of capital investment, because the forecast here is that the terminal market as we know it at the Ontario Food Terminal will have a smaller share of the market.

The other issue that is really of concern right now in long-term planning of any terminal market is what impact the possible free trade agreement will have. Right now, the federal government is not proceeding with some regulations and legislations that do give our producers, our fruit and vegetable producers, protection. There is the issue of consignment selling, whereby if you had a truckload of Georgia peaches coming in, it could come in undeterred and find its own market anywhere at any price.

Really, the whole marketing issue, which is very closely defined in this report, says that until we know the long-term policy of the federal government in regard to marketing and trade in fruits and vegetables, be cautious by taking that as an option.

I agree with you, Mr. Furlong, that it certainly is an option that should be looked at in the issue of perpetual lease, but right now, on the basis of this study, I would predict it would be an expensive and not profitable or successful way to do it.

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Mr. Furlong: Does the ministry have an opinion with respect to whether that operation is a monopoly within the boundaries that are specified in the act?

Mr. Dombek: We do not have a legal opinion in writing from, say, the Ministry of the Attorney General. However, we do have an opinion that was drafted by Mr. McMurtry back in the late 1970s, one on which I agree, and that says sections 12 and 13 of the act really do not set up a monopoly situation; rather, they set up an approval process.

If you take a look at section 12 of the act, what happens initially is that a person who wants to set up within the geographical boundaries of Peel,



Metropolitan Toronto or York has to get the approval of the board. If the board were to refuse or to place limits on that approval, then the individual or the company would have the opportunity of appealing that to the minister.

In reviewing my files and in reviewing the testimony that was given last week, it was indicated that no one had ever asked for a section 12 approval. I think I have found one situation where it happened. Dr. Collin and I were discussing it this morning. It was a situation involving a company called Briarcrest. This was in the minutes dated June 26, 1978.

Briarcrest provided information to the Ontario Food Terminal Board and asked for permission to set up its own terminal. The solicitors for the food terminal reviewed it. After two or three meetings, they obtained further information from Briarcrest and they gave an opinion to the terminal which the food terminal board accepted.

Basically, they found that Briarcrest acts as a secondary wholesaler or jobber. Perhaps Dr. Collin can explain that better than I can. Essentially, they were already selling foodstuffs from the terminal once again. In other words, they were acting as a further middleman, if you want, buying from the food terminal, from the people who were bringing the fruit and vegetables in, then reselling it to other individuals. At that time, the food terminal board told them that there was no problem with what they were doing. There was not any difficulty.

That is the only situation I have come across in our files that would indicate someone has asked for that approval. I believe the testimony from Mr. Carsley and also Mr. Collins would indicate that it has not been a section that has been used with any frequency.

Mr. Furlong: One final question, if I might: Has the ministry ever attempted to cost out what it might cost to buy out these leases?

Mr. Dombek: Not to my knowledge. Certainly, we have not done it in the legal branch. I do not believe it has been done anywhere else in the ministry.

Dr. Collin: No.

Mr. Dombek: I think you would be looking at a substantial amount of money and the question is, is this what the province wants? With something that seems to be operating with a minor glitch, do we want to spend perhaps millions or multimillions of dollars for the benefit perhaps of 28 to 30 unit holders that are presently in existence and not use those moneys elsewhere? That is a question I cannot answer because that is a policy decision.

Mr. Furlong: I agree. I think you should use the money in building new facilities.

Mr. Dietsch: I would like to go back, if I might, to the membership on the board. I understood you to say that the act was being modified and being reviewed. Is that being reviewed by the board itself or is it being reviewed by both the board and the ministry?

Dr. Collin: Both the board and the ministry. The deputy instructed the staff to, in fact, co-ordinate the review of the act, and I did mention that Mr. Dombek had a subsequent meeting on clauses or articles 703 and 704, which are basically regulatory and penalty clauses, as I recall them. That review is ongoing; it is certainly on the table.

Mr. Dombek: Let me tell you what the process is, as far as I understand it. As of the annual meeting in October 1987, the deputy minister suggested to the board to review the act. I offered my services and the services of my branch to assist them in that review. The board, as you are aware, has its own law firm and I understand it is in the process of conducting that review. I have not been consulted, nor has anyone in my branch, to my knowledge, as to any further amendments to the act itself. This is not in relation to the regulations that Dr. Collin was talking about.

In essence, I expect that the food terminal, once it has its general policy direction as to what amendments should be made, will come forward and ask us to give an opinion, draft the changes and assist it in making its presentation to senior management and to the minister so that if amendments are necessary, they can be done. Unfortunately, I do not know what stage that process is at. That is in the hands of the food terminal at this stage.

Mr. Dietsch: I was one of the ones who brought forward the aspect of whether there were buyers on the board or not. Quite frankly, I see that as a bit of a balance. I also feel that from a consumer point of view, perhaps leaning more towards the administration field, that aspect should be looked after.

The other point that I think will have to be addressed now, when you review the act, or certainly it is going to face you in the near future, is the division of the board in terms of producers and what commodity they represent. There are now more flowers coming on the markets. That is not the same type of commodity, nor do they go through the same type of growing procedure, as the fruit and, likewise, the vegetables. Many of them come from different areas of the province.

I feel that when you are looking at producers' representatives--I pass these along to you and certainly they will be passed along to the board as well--the commodities of flowers, fruit and vegetables should be taken into consideration.

On the point that was made about the limit of the board in respect to seven people, in your review, is that an area you are looking at expanding, or are you thinking of shrinking the number of individuals who are representing the board now and maybe putting on consumer people, as this committee is suggesting?

Dr. Collin: Could I try to pick up two points Mr. Dietsch has made? Fortunately, we anticipated your question. On producer makeup, I think we do have very good representation. Keith Collver is primarily occupied in the sale of apples but does have very broad experience in the marketing of all fruit. He is very useful in the aspects of strawberries. He knows the industry very well.

John Lum, the second producer, is a vegetable producer who specializes in so-called Asiatic vegetables. This has been a very big growth area in the farmers' market because of the restaurant demand, particularly in Toronto.

Mrs. Grace Dekker is a flower producer who sells in the market.

We are very fortunate, and have good planning of the minister and ministry staff, to have a wide representation of flowers, fruit and vegetables, so I appreciate your question. It helped us.



As far as the number is concerned, I guess a lot would depend on what your recommendations would be on this issue of consumer representation. We have made the point that from an administrative point of view we did not particularly want a ministry staff member on there. If the issue is that a knowledgeable consumer should be on it, that would mean either taking off a producer or a dealer, for that matter. But we think our balance is a fairly useful balance right now, so it would depend a lot, Mr. Chairman, on what kind of recommendations you might give. Mr. Dombek is quite clear; we have got a limitation on the act at this time for members.

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Mr. Dietsch: Maybe I could ask you, I did not hear it--

Mr. Chairman: Mr. Dietsch, I know your colleague wants to leave at 11:15 a.m. If he just had maybe one question, he could have his and then you could come back.

Mr. Dietsch: Absolutely.

Mr. Velshi: I have four questions in one. Dr. Collin, you mentioned that 20 per cent of the produce is marketed through the Ontario Food Terminal. Just very quickly, without the details, how is the rest of the 80 per cent marketed?

Dr. Collin: I would say the big bulk of the produce goes directly to the distribution centres of our major food chains. There is a fair bit of produce, in fact, marketed at other farmers' markets throughout the country and throughout the province, as you well know. There is also on-farm marketing or roadside marketing.

Those are probably the three significant ones. There are some direct, individual farmer sales, but in the fruit and vegetable business, which is not a highly regulated one in the sense of board organization, those would be the important ways of marketing.

Mr. Velshi: OK. This 20 per cent that is marketed through the food terminal, what percentage does that represent of the total sales of the food terminal?

Dr. Collin: It may well be in the report. I do not have the answer.

Mr. Velshi: Would it represent 50 per cent or 80 per cent? Would that represent the majority of the marketing?

Dr. Collin: Could someone help me? I think the figure is in there, but I cannot recall it.

Mr. Velshi: All right. We will leave that for later.

I asked this question the previous time. The Oshawa Group owns five units there. I think it is five; I may be wrong. Is it possible that the Oshawa Group, over a period of time, can own all 28 if it chose to go that way?

Dr. Collin: Under the proposed C unit leasing it is not possible, if, in fact, they proceed to build the eight to 10 units.

Mr. Velshi: I am talking about the existing old units.

Dr. Collin: The existing A and B?

Mr. Velshi: Yes.

Dr. Collin: That really is a matter for the food terminal and, particularly, the owners of the present leases. I do not think we have any control over that.

Mr. Dombek: It is possible. I assume that if the Oshawa Group had the funds, and if the other individual leaseholders were willing, they could take over, sublet or so on, the remainder of the terms of the lease.

Mr. Velshi: So the comment I made the last time, that this would be the best land deal since John A. Macdonald gave land to the railways, probably holds true; no rent to pay, just expenses and maintenance.

Mr. Dombek: It is an interesting concept, anyway.

Dr. Collin: Could I make a point on that? There is a marketing point here that, for the fruit and vegetable industry, it is a very useful process served to have both dealers and farmers marketing in the same area.

One of our main concerns is to maintain and promote the quality of Ontario fresh produce. One of the best ways we can do this is to have a comparative market, where the farmers do see the imported, flown-in produce coming in and finding a price. It is a very useful process.

I think I have a sense of where your direction is going with the Oshawa Group question. I would doubt very much that that will ever happen, because I think the interest of the industry itself is to maintain an assurance that there are many different kinds of markets on that. It would be self-defeating for the whole industry to see it capitalized into one owner. I do not think it would ever happen.

Mr. Velshi: OK. Finally, I am going to leave you with a thought. As I understand, there is a goodwill feature ranging from \$500,000 to \$1 million per unit being sold when the lease is being transferred. If I am correct on that, in the event of breaking these perpetual leases, we are looking at about \$500,000 each which the government would be responsible for. In general business terms, we are looking at \$14 million just to break these perpetual leases.

Would you feel it was better to use that \$14 million to build 56 units? The cost of each new unit that we are planning to build here is \$250,000. If we are to use that \$14 million to build 56 units, we then have enough units to cover the demand there right now on the waiting list, plus have extra units and reduce the whole area to a market value situation where there is no goodwill attached to it. We get down to an area in the market where we are nearly ready to market more produce. Does that make sense? Have you ever looked at it in that light?

Dr. Collin: Yes, Mr. Velshi, you make a very, very good point. I think you asked the same question in the previous hearings. That is one reason I wanted to bring in this study. I do not expect you to read it and comprehend it all in one sitting, but it is really saying that investment in terminal markets is not a priority in the industry.

The priority of the industry is, according to this study, to find more



collective ways of bringing produce together to put it into the retailing system and the wholesaling system. If, in fact, you take the report done on behalf of all the fruit and vegetable and flower growers of Ontario, it is saying, "Don't make an investment in a new food terminal."

It is a hypothetical question, but you have to take into account that this is a very detailed report and there is one very simple recommendation on the issue of terminal markets. In fact, the ministry should look at the objectives of its mandate and say, "Is that being met with the terminal market we know?" But there is no request in here for further investment in terminal markets.

Mr. Dietsch: I just want to refresh my memory on a couple of points about the membership and then I would like to move on to something else. Would you refresh my memory in terms of the length of appointment of the board members. Is it three years?

Dr. Collin: Could I ask Pam Young? She does much of the detail on these appointments. Could you help me on this, Pam?

Mr. Chairman: Could you identify yourself, please.

Mrs. Young: My name is Pamela Young. I am executive assistant, marketing and standards. I work with Dr. Collin.

Mr. Dietsch: You are going to have to speak up a bit. I have a bad ear.

Mrs. Young: All right. I will try to speak up.

Mr. Dietsch: It is from listening to my friends across the House, and it is really acting up lately.

Mr. Runciman: He is talking about the Liberals on the other side of House.

Mrs. Young: I will try to enunciate.

Mr. Chairman: Mrs. Young has the floor.

Mrs. Young: Appointments do vary in length. Usually, what we try to do is to have a proper turnover on the board. This is the general policy of any board. We do not like to see too rapid a turnover in one year. We would like to maintain a turnover that would permit the functioning of the board in any given year. This year the appointments that were renewed were done so we had one person appointed for a three-year term, another for a two-year term and another for a one-year term. What we are aiming to do is to keep the board renewing at a proper rate.

The other problem is that some people are reluctant, if you are offering an appointment, to accept a three-year term. They are more comfortable with a one-year or two-year term, depending on their commitments in other areas. There are a number of factors that come into play, but normally there is a three-year turnover and the possibility of renewal after that. In general, there is normally a six-year limit, in total, to appointments to any board.

Mr. Chairman: Those are government appointments?

Mrs. Young: Yes.

Mr. Dietsch: So it is much in line with the policy, as it goes with other government appointments?

Mrs. Young: Yes, we maintain the same policy across all board appointments.

Mr. Dietsch: Thank you. The other point I would like to make on the act for your reference, as something you may want to take into consideration, is that I have noticed in the act, I believe it is in clause 1(b), that there is no reference made to nuts. There are a number of growers now in Ontario who are moving into that product, some of them quite substantial. It is just something that should be addressed while we are reviewing the act and moving into the future.

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I would like to move now. I know there has been a tremendous amount of discussion with respect to the A and B units. I would like to make, if I might, a couple of points in that respect. I realize that many of these issues were as a result of previous times and that the present people involved, either those on the board or, in fact, yourself, really are trying to work with what was given to you as an inherited situation, much along the same lines that we in government today are trying to wrestle with it. In order to get on with what I view as trying to settle the particular issue--

Mr. Jackson: What are you referring to?

Mr. Dietsch: Did I hear some mumbling in the background from Mr. Jackson?

Mr. Chairman: Order.

Mr. Dietsch: Thank you very much, Mr. Chairman. I think the one thing that I would like to get on with is the settlement of the situation. I raised a question in the House in regard to the eight to 10 units and when they are going to be built. I am quite anxious. I personally foresee that a major step towards the settlement of this issue is to put those units out there. When are we going to get on with this?

Dr. Collin: Could I try to handle it? It is really an issue that the Ontario Food Terminal Board has to address. That is obvious. Could I just make this one comment?

Mr. Dietsch: OK.

Dr. Collin: Since I have been involved with the board over three years, it has really changed its long-term planning ideas of the food terminal. In 1986, they were talking about locating the new units on the southwest corner. I think you did notice that they are now--when they were here last week--saying the proposal is to build them on the south side, seeking from Ontario Hydro an opportunity for access to the right of way.

In all due regard, I think the board has thought out its future much better than it did when I first saw some of the presentations in 1985. I think they are very close to having a very good site development plan. It makes a lot of sense. Some of the problems in the southeast location were that they



were really running counter to truck traffic issues on the market. These are details the board and its own administrators need to address. I think they are coming very close with the last presentation I saw. I assume they can get the support of Ontario Hydro for access to that right of way area and proceed with the units. From a ministry point of view, it is our priority to proceed with the units. I think they are well planned and their presentation of the site development makes a lot more sense than what we saw in 1985 and 1986. We feel very confident of it.

Mr. Dietsch: I recognize that in some respects its a board issue, but I also recognize that if someone took a needle out and gave someone a little jab, it would cause them to move in a little bit faster way.

One of the things that concerns me is that a questionnaire that was recently put out from the board was talking about a long-term lease in terms of offsetting some of the costs for the construction of the new units. That, to me, presents a difficult question in terms of whether we are we getting ourselves back into the same situation. Hopefully, we have seen the mistakes that have been made in the past. We are working to correct them. We would learn by those and move on. On the questionnaire that was sent out, I do not know if, as is sometimes done, a question was thrown in to create some provocative thought, but I would hope that is all it is and I would want to flag that with you, in your position, to make sure we do not end up in exactly the same ball of wax.

Mr. Black: Are there some advantages to longer-term leases that this committee would not be aware of that should be identified for our consideration?

Mr. Dombek: I would think so. I was going to break in anyway, Mr. Chairman, if I could. I think something that this committee may want to think about is the value of a long-term lease and how long should these leases be. The value obviously is to attract people who are going to have a commitment to operate at the terminal. From the leaseholder's point of view, it is of value because then he can do his long-range planning, whether it is five years into the future or 10 years and so on. He knows he is not going to get turfed out. Perhaps 30 years is too long. I do not know what the magic number is, but I think that a lease longer than one or two years is obviously necessary.

That kind of turnover would put the long-range planning for the board and the leaseholders into some jeopardy. We may be looking at five years plus a five-year renewal with annual renegotiation of the rent or something along that line. There are various modifications that can be made. From my perspective, if I was a business person and wanted to go into the terminal, I would be very hesitant to enter into a lease that is going to probably reflect fair market value a little bit better than the original leases and only be in there for one or two years.

Mr. Dietsch: I understand that concept very well and I realize that could be a possibility in terms of construction. That could be one of the options you would consider. My main concern is that you do not put yourself into exactly the same situation we are trying to get out of ourselves.

Mr. Dombek: Yes. The big problem is the lease itself has a 30-year term in existing A- and B-unit warehouse leases. The problem is that right of renewal into perpetuity. That is the difficult provision to get around. I agree with you. Given circumstances today, we hope the terminal board would negotiate from a stronger standpoint.

Mrs. Grier: It seems to me that one of the other problems with the leases, and one I hope will be addressed in the new leases, is the right of assignment. I recognize the need for a lease in order to have some stability in your business. There are people in there on two- and three-year subleases who are prepared to go in on that basis, but surely if I have the right, if I choose to stop my own business to assign it at a price, whatever the market will bear, to someone else, that is part of the leasing problem. Do you see the ministry doing anything to prevent assignment of new leases?

Mr. Dombek: I do not see that it would be role of the ministry to stop the assignment of any new leases. The legislation and the cases--the Court of Appeal case that has interpreted the legislation--indicate that the board has the authority to enter into the new leases, but I think the board is aware of your problem. Also, in their presentation to the ministry back in October 1987, they addressed that issue. They indicate that yes, the way the leases are drafted at present does give you a very good opportunity of assigning or subletting your lease without any scrutiny.

In reviewing the various board minutes I have in my possession, these were scrutinized and at times various additional information was required from the leaseholder and the sublessee, but in effect that information was looked at and so on. As long as there was no unreasonable problem, they agreed to the subletting.

I think the board's solicitors have indicated to the board, in a legal opinion dated July 3, 1987, that yes, the subleasing and the assignment clauses should give the board more authority to say yea and nay as to who gets a sublease and so on and to look at perhaps the terms of the subletting agreement. That certainly is the position of the solicitors for the board.

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Mr. Dietsch: I think we have handled the A and B units. I want to focus some of my attention to the outside market, which I think was the initial beginning of why the fruit market actually came into play. You made comments with respect to a probable decline over the long period of time. I take a bit of exception to that, based on what is happening through the sales of the fresh market.

I would like to ask if you have given some consideration in your review of the act to whether or not the board should be instructed within the act to have an annual meeting with all the outside users of the market, which I feel will lend them well to gleaning a lot of information from people who watch and live with it every day and see the little intricacies, and also in respect to expanding the outside fresh market, if the ministry has dealt with it in that way.

The reason I ask the question is, obviously as I view the free trade issues, it is going to be more and more difficult for people in the tender fruit industry and the grape industry to dispose of their products. If we start limiting the type of market avenue that is available to these people, then we are sort of squeezing them between the rock and the hard place. I would like to have your comments in that respect.

Dr. Collin: I would just repeat what I said before. There are some very plus aspects of the Ontario Food Terminal market. It is a price discovery mechanism for many of our commodities. For example, our Ontario Asparagus Growers' Marketing Board finds it is a very useful process in setting price to know what is happening in the Ontario Food Terminal market.



Also, it is very important that our producers are competitive in the sense of quality. It is a real educational program for a grower to go on the farmers' market and compare the produce there to the produce being offered to the dealers, which may have been flown in from Holland that morning. It is a very important part of it.

As far as expanding the opportunity for the outside fresh market is concerned, this report is saying that the farmers' markets can be a detriment to the aspect of quality and standards of the Ontario fruit and vegetable industry and the competitiveness of it. I really want to caution that some people in the industry say that farmers' markets, although they give them a quick and many-placed market for the produce, do not always give the best presentation and make Ontario produce most competitive, because some farmers do not make a good presentation. That is really what the report is dealing with.

What the report is saying, on the basis of the industry review, is let us get growers organized more together out in the production area, to come in with a common high standard, excellent containers, containers with good visual promotion on them and make sure we have an acceptable and demanded quality. Do that out in the field and then bring it into the central or terminal market or to the retailers.

Yes, there are two sides to the issue. Expand the opportunities for farmers' markets, which the ministry is doing. They have a number of pilot projects under way now, but they are also saying, "We have to listen to what the industry is saying, and the industry is saying where the real need is for the producers to get together in some sort of collective presentation of their produce to remain more competitive."

Mr. Dietsch: But that can be handled on the market itself, through one of the suggestions I have made. I have worked on the market as a grower and I can tell you the buyers limit that type of thing from happening substantially. I suggest that it could be there, but it can be controlled very easily.

Dr. Collin: I agree.

The Acting Chairman (Mr. Black): I wonder if I might interrupt at this point. It is now getting close to 12 o'clock and we have two more people who would like to ask questions. If possible, we would like to finish this part of the discussion without limiting questions. Could we be brief in the questions then and the answers?

Mrs. Grier: OK, I will try to be. Let me see what is the most important one. I had better start by saying I am very uneasy at the sense I am getting in all of this tennis match back and forth between the ministry and the board as to where responsibility lies, that the ministry is not going to take enough responsibility for making sure that the new leases in the C units do not perpetuate a problem. I do not know whether you have the power to do this, but let me just say I think you ought to be very integrally involved in the compilation of the waiting list.

We had from the board when it was before us statements such as, "Anybody who is on the waiting list has to be able to put the money up front to buy the units," which to me is a selective process. We had it that people who had any sort of an interest in A and B leases would not be eligible, and then we had assurances that existing sublessees would be eligible. I would like some

assurance from you that we are not going to have a situation at the board where it is a fairly closed waiting list, with conditions to leasing imposed that make it impossible for it to be an open competition.

Dr. Collin: The solicitor has just advised that it is very difficult to give that assurance, but let me put it this way. I think the ministry staff has a very great interest in making sure of what it sees as a solution, the building of the new C units, having the best possible opportunity. It reminds me a little bit of working with our commodity boards. I think you know we have 25 marketing boards. The philosophy of our ministry is that our ministry is there really to help people help themselves. We apply that very carefully.

Mrs. Grier: You have certainly done that to the Ontario Food Terminal Board.

Dr. Collin: Let me continue. The point I am trying to make is that we try to develop a sense of maturity and responsibility with the boards by saying, "It is your responsibility, but you have to answer to the minister in this regard." I think the same process will be taken. I cannot give you the assurance that it will be perfect in the long run, but I can give you the assurance that the ministry staff is very interested in making sure the C units are an effective way out of this very difficult problem.

Mrs. Grier: As to the expropriation of the leases that you say would be one of the options in order to end the perpetuity, what you would be expropriating would be the right of the head leaseholders to assign that lease. You would not surely be expropriating their business goodwill or whatever it was the board said they have to have the right to assign. Would you not be expropriating something you have given them, which is that by giving them that monopoly originally, you gave them the right to acquire large sums of money when they turned it over? Why are you expropriating?

Mr. Dombek: We are actually expropriating the right they have to renew the lease, not to sublet. They have that right already in there. That might be another aspect of it. There are two aspects. There is the perpetual right of renewal and then there is the subletting problem.

Assuming that you were going to pass legislation that would do away with those two problems, then you would have to be in a position of compensating. You have given them this right. It is like all the land in the province belongs to the crown, or did belong to the crown, and then individuals bought it--your house, my house or anyone else's. Even a tenant has a certain right under his lease to that property. Once the government decides to use its "heavy hand" and to come in and take the right to enjoyment of that property away, then there has to be some compensation. While initially that was given to the leaseholders, the solution is not that easy, saying, "We gave it to you and now we are going to take it away."

Mrs. Grier: You see yourself compensating for not only the right to continue to do business in perpetuity, but for the right to assign that unit to somebody else as well.

Mr. Dombek: I think any unilateral move by the government or the province to take away both those rights would require some form of compensation.

Mrs. Grier: Do you have any solution to the problem that is faced now by current sublessees whose leases are running out and who, in the face of



the long delays in building the new units, are faced with either going out of business or paying the key money of up to \$1 million

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Dr. Collin: I think our minister is on record in the House as answering that question already.

Mrs. Grier: He said it was up to the Ontario Food Terminal Board.

Dr. Collin: I should check Hansard on this, but he saw no quick and easy solution to the problem that you have presented to him, if I recall the record.

Mrs. Grier: May I talk just briefly about the land transaction in 1980, which horrifies me, quite frankly. I am wondering if that kind of financing is still the practice of your ministry and whether there is any way in which the new units can be financed other than by demanding upfront money from the purchasers.

Dr. Collin: Could I be a little more specific? Are you really asking whether the ministry has agreed to ensure the guarantee of the funds for the construction or are you getting into the issue of the setting of a price by the board for the lease on the new facilities? I am not too sure what you mean.

Mrs. Grier: I guess I am getting into how the ministry can avoid the board having to demand upfront contributions which would then obligate the board to give special privileges to those who put the money up front. It is a government property and you are going to expand it. Why can you not just put up the money and expand it and recoup that money over the years in the rent that you charge?

Mr. Dombek: Perhaps I can answer part of that question. What we have here, of course, with this particular agency is something unique. Perhaps the best equivalent would be a crown corporation. As such, it has been given a great deal of authority under the Corporations Act and through its own statute to go out and conduct its business in the best way possible.

If I can refer to the 1963 Court of Appeal decision in relation to the Ontario Labour Relations Board and the food terminal, I will quote from the head-note. This is the court speaking:

"The board"--that is the food terminal board--"is a corporation wholly free and independent in the exercise of its powers, and also free from any control by the crown over its expenditures and finances. The fact that the Lieutenant Governor appoints its members does not necessarily make them crown officers nor is any control by the crown intended by the provisions of section 9 of the board's constituent act respecting information to the Minister of Agriculture and the Legislative Assembly."

Mr. Justice Laidlaw goes on at page 534 of the decision, which can be found in the Dominion Law Reports, volume 38, second edition. He quotes from an earlier case interpreting the Ontario Food Terminal Act, a case called Jamieson's Foods Ltd. and the Ontario Food Terminal Board, which went to the Supreme Court of Canada. Basically, he says this:

"It depends mainly upon the nature and degree of control exercisable or retained by the crown. It was intended, no doubt, by the Ontario Food Terminal

Act 'to create a public body corporate, and vest in it power to do all acts relating to the operation of a public market,' as stated by me in Jamieson's Foods Ltd."

It is always nice to be a judge and to quote yourself.

Mr. Furlong: Could I have the page number of that, please?

Mr. Dombek: The case starts at page 530 and the quote is from page 534.

We have not only that situation and that Court of Appeal determination of what the act is and what the food terminal board has, but we have what are directives from Management Board in the manual on what our relationship is. To quote from that, it is one more--and I use the words that they use--"assurance versus control."

In essence, what Management Board has told us and what the courts have told us is that the Ontario Food Terminal Board, as a crown corporation, has a great deal of authority to conduct its own business. What they are required to do is to come to us with their suggestions and recommendations as to changing the statute and so on. We cannot control their operations as much as you would like us to.

Mrs. Grier: If we as a committee wanted to establish firmer control and to change the legislation, would you have recommendations that you could make to this committee on how that could be accomplished?

Mr. Dombek: Are you asking Dr. Collin or myself?

Mrs. Grier: Whichever court the ball chooses to land in.

Dr. Collin: Let me give my colleague a chance to catch his breath. I guess that is really not the way the bureaucracy works in the process.

Mrs. Grier: I keep hoping to change the bureaucracy as well.

Dr. Collin: You could change the bureaucracy, surely.

The schedule 2 agencies, as Mr. Dombek said, are unique agencies. It is a question of whether you make a decision that you want a schedule 2 agency to run that kind of marketing responsibility on behalf of the producers--as Mr. Dietsch says, it is important to allow them to take those responsible actions without interference of ministry, minister and government--or whether you want to redefine the responsibility of the agency.

It is not necessarily just an issue of the act, I presume, but I could see some of the options. This is the bureaucrat talking now. You have to look at the issue of the options. Do you want to have a different schedule of agency, one where you could control the administration?

This is sort of a historic thing. The Ontario Food Terminal was set up as an agency with that authority to represent and collect through the profit of sales and the responsibility to maintain and build that kind of a terminal. I do not know if it is unique to Agriculture and Food or not. We do have it with the Ontario Food Terminal and we have it with the Ontario Stock Yards Board. They are, as schedule 2 agencies, very strong. They are given a great deal of responsibility under the mandate of Management Board's definition of



"mandate" and by their own acts. So it is really a process that you have to address to the minister.

Mr. Runciman: I have a couple of quick questions. Perhaps this should be more properly directed to the political side of the ministry. Has any consideration been given in the past to privatization of the terminal? Has that ever been looked at or talked about, for that matter?

Dr. Collin: No, we have never discussed it in a serious way at senior management. It is very interesting that the reference was given to trends in other cities, for example, New York City. When they moved from the Bowery to Hunts Point, the process of privatization was offered. Whether or not this is a serious option has never been discussed seriously, to my knowledge, in the ministry or with the board.

[Interruption]

Mr. Dietsch: That is the Ontario Food Terminal protesting outside.

Mr. Runciman: It is the New Democratic Party caucus. They want more research money.

I guess that sort of initiative would have to originate with your political masters. It seems to me that the testimony we heard a couple of weeks ago with respect to this is that Ontario is unique in having a crown corporation involved in this business endeavour. I personally would like to see this committee encourage the ministry to at least give some consideration to the feasibility or desirability of privatization.

One of the justifications for the creation of the terminal in 1945 was the fact that there was no private sector interest. Yet when the board officials appeared before us, one of the arguments they were making was that section 12--I think that is the one; I cannot recall--should be retained to provide them with protection in the Metropolitan area, because if that protection was lifted, another terminal might pop up and present competition which could damage their interests. That seems to me to automatically remove one of the early justifications for being established as a crown corporation.

I think it is something that should not be discredited lightly. We see a trend to privatization in the western world. I think it is a positive one. Perhaps we can put this into private hands and, looking at this in the future, perhaps it is going to be something that can be done in an effective way by the private sector. If that is the case, hurrah.

Mr. Chairman: Anything else? OK. I think we wanted to wind up at 12 o'clock. I have Mr. Furlong.

Mr. Furlong: One question. I am looking at page 13 in the recommendation. It is to ascertain whether the terminal's operation serves the best interests of the fruit and vegetable industry. I assume that was the mandate back in 1945 when this was created and it has been that all along.

I am asking for a legal opinion now, I guess. Given that that is part of the mandate, the creation of the board, could it not be argued that for someone to make \$60,000, \$70,000 on a sublet--I am taking everything else into account, but he is making \$70,000 on land, because he is locked into a perpetual lease--and because that is not in the best interest of the fruit and vegetable industry, could you not then make the argument for taking the lease and saying that that is reasonable grounds not to approve a sublet?

Mr. Dombek: Mr. Furlong, as I have always told my colleagues, get two lawyers in a room and you get three legal opinions. That is certainly one that is possible here; certainly you could make that argument. It probably would be challenged by the person trying to do the subletting. The courts have interpreted those types of leasing clauses in a very restrictive manner against the landlord--in this case it would be the food terminal board--so that it gives the subletter and the lessor the opportunity to do the lot.

I know that the law firm of Shibley, Righton and McCutcheon has looked at that issue. They feel that the present section is very broad and that what should be done is that in the new C leases--and obviously if any changes were made to A and B leases, that problem be addressed, so we would not have the issue; we would not have the problem of having to go to court and paying extensive legal fees.

Mr. Chairman: Fine. I want to take the opportunity to be able to--

Mr. Dietsch: Mr. Chairman, could I just intervene for a moment? I know my friend Mr. Runciman would like to privatize this thing, but let me tell you that the backside of that sort of thing is that all those little farmers who use that outside marketing unit would just become victims of these great, big corporate giants. That is major concern of mine and I wanted it on the record.

Mr. Runciman: That is Mr. Dietsch's opinion, Mr. Chairman, and I am not suggesting it should be privatized, because I do not know; but I am saying it is an option that should be looked at. That is all I am suggesting.

Mr. Chairman: I want to thank you gentlemen, Dr. Collin and Mr. Dombek, for appearing before the committee this morning. Your input, I am sure, will be found very interesting, and we thank you for taking the time out to come here. Thank you very much.

The committee continued in camera at 11:53 a.m.



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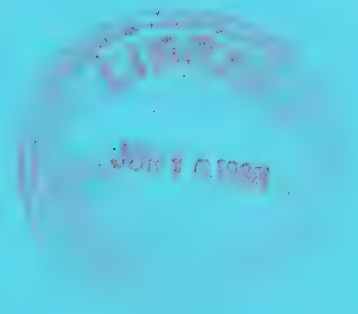
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

CIVIL SERVICE COMMISSION  
ONTARIO SECURITIES COMMISSION

WEDNESDAY, MAY 25, 1988



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Daigeler, Hans (Nepean L) for Mr. Lipsett

Miclash, Frank (Kenora L) for Mr. Black

Reville, David (Riverdale NDP) for Miss Martel

Also taking part:

Nixon, J. Bradford (York Mills L)

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

McLellan, Ray, Research Officer, Legislative Research Service

Witnesses:

From the Human Resources Secretariat:

Todres, Dr. Elaine M., Deputy Minister

From the Ontario Securities Commission:

Beck, Stanley M., Chairman

Salter, Charles, Vice-Chairman

Pascutto, Ermanno, Director



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, May 25, 1988

The committee met at 10:08 a.m. in room 228.

AGENCY REVIEW:  
CIVIL SERVICE COMMISSION  
(continued)

The Acting Chairman (Mr. Velshi): I would like to call this meeting to order. We have with us Dr. Todres, deputy minister of the Human Resources Secretariat, and Mary McKeen, Dr. Todres's assistant. They will be speaking to us on the Civil Service Commission this morning. I would like to invite Dr. Todres to start with whatever she may want to say and then we can get into some questions and answers.

Dr. Todres: Good morning, Mr. Chairman, and members of committee. Thank you very much for the opportunity to be here. As was indicated by the chair, I am the deputy minister of the Human Resources Secretariat and if she were here, you would be meeting Mary McKeen, my executive assistant, who is joining me for today.

I would like to thank you for the opportunity to speak briefly about our efforts to achieve employment equity within the Ontario public service. While it is not, shall I say, normal to meet with ministries in this way, I am very pleased that I will be able to tell you some of where our thinking is and what our potential directions will be in the future.

I wanted to begin by saying that the achievement of employment equity is an enormous undertaking for any employer in Ontario, not the least the second largest employer, namely, the Ontario government, with some 80,000 staff, two thirds of whom are located outside of Toronto and the greater majority of which are unionized, located in 26 different businesses with 26 different ethos within each business line or product line.

The challenge is nothing short of fundamental, societal and attitudinal change which will result in long-run changes in access and promotional opportunities for those who are currently perceived to be unempowered. Our definition of employment equity is one of proportional representation, and we expect in the long term the five charter groups, namely, women, disabled, visible minorities, francophones and native persons, to be achieving proportional representation by occupational group within the civil service.

Let me just give you a statement of some of our facts. We have conducted surveys, and the population statistics in Ontario are that women are 50.9 per cent of the population, aboriginals are 1.2 per cent, francophones 4.7 per cent, racial minorities 10.1 per cent and disabled 13.5 per cent.

I am going to contrast that with what we found in terms of our internal census, those persons who are in the Ontario public service. Women are 47.6 per cent of the population contrasted to 50.9 per cent. Aboriginals are 1.7 per cent contrasted with 1.2 per cent in the general population. Francophones are overrepresented: 6.7 per cent versus 4.7 per cent in the general population. Racial minorities are overrepresented at 11.9 per cent versus 10.1 per cent. Disabled are underrepresented at 5.9 per cent versus 13.5 per cent.

I apologize for not having brought the statistics. I ought to have brought a piece of paper, but if the committee wishes I will present that material in whatever form you like when you ask me questions.

The point about the data is very obvious, and that is that for the Ontario public service, the issue is not the underrepresentation of the charter groups; it is where they work. The issue is not that we have insufficient numbers of visible minorities in the Ontario government; it is that they are clustered in certain occupational groups.

Our definition that I referred to at the beginning of my remarks is that in an optimal world, you would have visible minorities proportionately represented in our myriad occupations and not locked into one particular occupational grouping, particularly if it were undervalued, as many of our clerical and other jobs have been, subject to the pay equity remedies which will be implemented by January 1990.

That is the factual backdrop. There has been in Canadian societies systemic discrimination, and by that I mean unconscious discrimination, systemic barriers placed in the way of both entry in and movement up in our civil service, and it is to these efforts that my task is directed.

I thought I might spend just a moment or two clarifying what the Human Resources Secretariat is, now that I have been in the job for some eight months. We are, as you know, one of the arms of the Chairman of Management Board. Mr. Elston has, as it were, two secretariats. One is the Management Board secretariat, looking at prudent expenditures or at expenditures in a prudent fashion and being the managers of the purse and, on the other side, my side, is the Human Resources Secretariat. As you know, because you have spent a great deal of time with Mr. Raymond recently, he is in the position of monitoring merit, etc., through the Civil Service Commission.

It is my minister who has carriage of the program known as employment equity within the Ontario government and it is I, as his deputy, who am responsible for the development of the corporate framework for the achievement of employment equity.

I thought rather than give you a detailed exegesis of the history of how we got to this point, in the interests of time, I would limit my remarks to some of the things that I have experienced in dealing with employment equity over the last four or five years, where our expected directions are going to be, and to allow full and ample time for the committee to engage in dialogue with me and among themselves.

The premise of our program is first that we are going to be using Judge Rosalie Abella's definition of employment equity, which is all-embracing and all-encompassing, which is the removal of systemic barriers and the achievement of equity to embrace not only affirmative action programs but also training, fairness in pay, child care, development. In other words, for a working mother the achievement of equal opportunity without the supply of child care is moot. So we are looking at all of the components of employment equity and how it we are to achieve employment equity.

The second premise, and I think it is a terribly important one to dwell on for just a moment or two, is that when you begin to unpack what employment equity means and when you begin to examine the needs of natives, women and visible minorities, it becomes very crystal-clear that there are great differences between and among groups.



Let me give you some examples. Visible minorities in Ontario are extremely well educated and are encountering essentially systemic discrimination and racism in the attainment of promotional opportunities within our society. That is a very serious issue and a very serious challenge. It has a very different contextual framework than when facing the subject of how to employ more natives in the Ontario government.

I have had many meetings with native representatives. There is the issue of whether they wish to work in a government other than a self-government, that is to say their own government. There is an issue as to what they have to do with children who have, by and large, no more than grade 8 or grade 9 education. There are issues of health and distinctions between reserve and nonreserve native persons and so on.

Contrast that with the situation of the disabled who, depending on the degree of severity of disability, are encountering a whole range of systemically discriminatory features in their lives, from the building that is not accessible to the table that is not accessible.

I am told by many in the disabled community that there is a disproportionately high incidence of sexual violence, meaning that a very high number of disabled persons, particularly women, have encountered sexual violence in their lifetime by primary care givers. They are having to deal with not only coming up to the wicket for employment but getting to the wicket, having to have suffered a great deal in their personal lives.

It is a very different matter, and I have used a dramatic example to point to how sensitive programs have to be. One cannot simply say that we will categorize all groups and have one Loblaw's generic no-name approach to employment equity and that will make a difference to the visible minorities. The majority of them live in Toronto as opposed to native persons who live in the far reaches of the north and may want to work for the Ministry of Natural Resources or whatever.

So we have two premises: one, the definition and, two, that while there are similarities between and among the charter groups, there are great differences. These have to be recognized in the development of the program.

The third point I want to make, and I know it is extremely obvious to all of you and you are familiar with it, is that gender overrides all variables in the prediction of inequity. What I mean by that is that a visible minority woman is worse off economically than a visible minority man and the native woman is worse off economically than a native man.

What I am saying to you is that the notion of doubly disadvantaged is extremely important when you look at the combination of either ethnicity and race or language and gender. That means that having said all that I said earlier about the differences between the categories, there has to be a very concerted move with respect to the combination of doubly disadvantaged women.

Now, what are we doing and what is it that my minister wishes to do over the next number of years? We launched for the first time, I believe, in the history of a central agency a very formalized consultation process. I have met with 70 umbrella organizations and community groups for over 60 hours to discuss what it is that they want to have happening in our employment equity program. I have had seven such meetings with each of the charter groups that I mentioned earlier and I want to share with you some of the themes that emerged from these extensive consultations.

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They are that there is a very serious regional component to the implementation of employment equity. People of colour are saying to me that the issues are centrally in Metro and in Ottawa. This is the perception of that particular community. The issue of natives, for example, is distributed in a variety of regions. Disability is randomly distributed in the population so the issue is not quite as regional as that. But where does it have its regional implications? In small locations where there will be one teeny, tiny office.

Consider a Ministry of the Environment office that wishes to attain employment equity and has five people in their 50s, who for the sake of argument, hypothetically, are white males who do not wish to retire. They are 50 and they have another 15 years of viable employment before them. If there is no movement in that office, there is nothing that regional director, and going up the line that deputy, can do to attain employment equity. There has to be movement in order to move people about and to give them employment opportunities.

The regional dimension is very important in terms of the consideration of how we implement this program. There are going to have to be very creative methods of working together with ministries to ensure, for example, that in the city of London, where there are a number of offices, we might be able to have cross-movement between and among ministry staff of regional offices in order to allow opportunities and enable people to have opportunities in terms of employment equity. So a major theme was regionalism or the regional dimension.

There was a great deal of discussion about what one has to do to get inside. How does one get inside the government? Then, of course, there was a great deal of discussion in terms of the removal of the impediments to move sideways, to move up. What are those barriers that have to be eliminated? There was a great deal discussion about the interview process. Is it fair? Is it systemically or unconsciously biased and so on?

There was a great deal of discussion about goals and targets, that it is absolutely imperative that goals and targets be established for the various groups over time and that they be monitored, and a great deal of discussion about the educational system.

In other words, there was a great deal of philosophical debate that employment equity within the Ontario Public Service, to be attained without consideration of the fundamental changes that have to occur in the institutions of our society, in advertising, in attitudes, in the school system, in the university system, in the banking system, in the financial system, in the economic system, is going to render our efforts less than useful.

What to do with that kind of suggestion is difficult to say but a message was heard loud and strong from the communities.

The first phase of the consultations has concluded and we are considering what next steps there will be.

The second thing that is extremely important, I think, and I hope you will share with me, is the strategy we are going to take to implement this.



Last year, my predecessor and the former Chairman of Management Board launched a program called Strategies for Renewal.

Strategies for Renewal is very simple in concept and design. It is to say that a ministry and a minister decides his or her strategic business case, his or her direction. Are we going to regulate? If we are in the Ministry of Agriculture and Food, what is the main business line we are in? It follows quite naturally the ministry must develop a human resources strategy since we all know commonsensically that no programs can be delivered without people. The Strategies for Renewal device was to ensure that ministries develop a strategic approach to the management of human resources and link it very directly to the strategies they are going through in the development of their business cases.

Now, again, this sounds commonsensical but the point is it was never done in the past. There would be some director who might have been asked to look at the people or whether we had sufficient budget in terms of salaries to carry out the program, but the fundamental review was never taken.

We are going to be sending out instructions to the ministries for their Strategies for Renewal document. I have just gone to the Management Board of Cabinet for general direction on that. Strategies for Renewal for the first time this year will include the filing requirements for employment equity. That is to say, employment equity is now seen as a subset of human resource management. Ministries will be obliged to file with me and John Sloan, the Secretary of the Management Board, their goals and targets. We are also asking ministries to conduct barriers analysis. What barriers are there in your ministry and how will you proceed to remove them?

These goals and timetables in the first year will be focused on executives and managers, and over time we will have detailed goals and timetables by occupational groups. This will be a cascading effect over the next number of years.

Should you ask me the question why goals and timetables are not being enunciated this year for people below the managerial level, the answer is really quite straightforward. We are in a partnership with the Ontario Public Service Employees Union. The greater majority of our staff are unionized and Mr. Clancy and I will have to reach an understanding as to how the collective bargaining process and the condition of seniority, etc., will apply in the attainment of employment equity. We have begun discussions and I think it would be fair to say that I am cautiously optimistic we will be reaching resolution rather soon.

The Strategies for Renewal document is the planning rubric under which ministries will begin their filing and their consideration of how it is they are going to apply employment equity principles to the way they do business.

In addition to all that, my ministry is reviewing all our staffing policies to ensure they are gender-bias-free, that they are not systemically discriminatory. Let me give you a small example. The analogy I use is that you have to have an employment equity prescription in your glasses because it makes you look at the world through slightly different lenses.

It was commonplace, and it is still commonplace, in the private sector that at the end of the job advertisement you would say, "Only apply if you make between such and such and thus and so." My staff looked at that and said, "Just a moment now; that is systemically discriminatory." The whole point is

that the unempowered are not making that amount. The visible minority clerk who has two degrees from Ryerson in business administration and may have enormous capabilities for a particular task will be a priori prevented from competing in that competition because of the bias that only certain people, who probably are those who have already had opportunities offered them, would be up for the task.

We are looking at outreach in advertising and recruitment strategies and a whole number of them, to scrub them up, to rinse them and to put them in that chemical known as bias-free staffing policies and to ensure they are neutral. We are also looking at programs, because I have a strong belief that it is not only the Human Resources Secretariat and Mr. Elston who are going to be carrying this.

In our northern Ontario relocation project, you will be familiar that six ministries are moving to the north. When we became involved in employment equity very seriously, I began to have conversations, as did the cabinet ministers involved. We asked the questions: "Will natives be hired in the construction of those projects? Will women be hired in the construction of those projects?" After all, they are very large construction projects. We wanted to make plain that employment equity is not some ethereal concept that only has to do with how many native persons are employed in the Ministry of Correctional Services, but it has to do with a general philosophy of how you do business.

We have been negotiating with the contractors in the tendering process. We are having active discussions with the unions involved to allow women apprentices in and we are hopeful that there will be some positive employment consequences as a result of that particular move.

Likewise, we are having discussions with the Ministry of Skills Development in terms of apprenticeship programs. It is extremely important for disadvantaged groups and individuals in those groups to have opportunities in apprenticeship and in nontraditional jobs, which at the moment, prior to the implementation of pay equity, are paid more than clerical jobs. We are looking at partnerships with individual line ministries for concrete results that will move things along.

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I am spending far more time than I wanted to on my introductory remarks, so let me just conclude by asking, what is the accountability feature in all this?

First, as you well know, each deputy minister is under a performance agreement with the Premier (Mr. Peterson). In that performance contract, the deputy must stipulate in very clear terms what his or her employment targets will be.

Second, all executives are now being paid on what is called a pay-for-performance system. That is to say, there are no automatic economic adjustments or merits, as there used to be in the past. You must construct, with your assistant deputy minister or wherever you are in the chain in the executive series, your contract with your superior. That must be signed off. In that agreement, you must have your employment equity targets specified. You are paid according to a grid and your performance and the measurement of your performance determines what you are going to be paid.



In addition to that, in the Strategies for Renewal document, Mr. Sloan and I will be approving, through the Chairman of the Management Board of Cabinet, all Strategies for Renewal plans, all human resource plans proffered by the ministries, including, of course, their employment equity components. I personally plan on being a tough marker.

There are a number of processes also that are going to ensure this kind of, shall I say, internal check and balance. One of them is that John Sloan and I, under the direction of our minister, are very committed to the notion of a ministry under the Chairman of Management Board that unites both the expenditure of dollars and the utilization of human resources.

We are developing a number of checks and balances within the Management Board process to ensure that this type of overview is taken into account by cabinet ministers in their weekly, sometimes daily, discussions in terms of what expenditure decisions and policy decisions are made. I am quite confident, with the number and variety of the checks and balances, that each and every executive, and indeed each and every supervisor who is responsible in the final analysis for the actual hiring and promotion, will be seen to be meeting, and more important will be meeting the requirements of employment equity.

In conclusion, it would be unfair for me to leave you with the impression that this is a simple task. This is an enormous undertaking. We are, as I said, the second-largest employer in Ontario. Employment equity spans much more than the hiring and promotion of people. We have to ensure, for example, that in new government buildings, child care facilities will be provided. There is the challenge of the negotiations with the unions to ensure that these things come to fruition. There is the balancing of the interests of the advocates with what is practical and doable in the short, medium and long terms.

We are looking very closely at varieties of methods of including voices from the outside, as it were, to ensure that we are moving along a similar path. On that note, I might say that we are working very closely with the Ministry of Citizenship, which as you know, has carriage of employment equity in the broader public sector and the private sector. We want to ensure that the train is moving along on the same path. The ministry has its views, the federal government has a series of overarching pieces of legislation, the city of Toronto has its own rules, and it would be less than functional to present a whole new set of rules that would be different than would be expected of others to perform.

Having said that, we are an employer. We are in the government. We are expected to be a model employer and in many ways to assume responsibilities our private sector colleagues would not. I believe we are poised to meet the rather considerable challenges.

Mr. Velshi: Just one thing before I start my questions, Dr. Todres: What is your relationship with the Civil Service Commission right now? Obviously, we started with looking into the civil service—

Dr. Todres: Yes.

Mr. Velshi: —and suddenly we realized that everything is on your side and we are left with the merit principle only. How do they monitor that?

Dr. Todres: The legislative framework under which I operate is the

Public Service Act, and as far as the Public Service Act is concerned, there is no Human Resources Secretariat. There is an organization known as the Civil Service Commission. Two years ago, when the government concluded some deliberations on the efficiency and the utilization of human resources and released its Moher report—I am sure Mr. Raymond went on about this in great detail—it was decided by the cabinet of the day that the Human Resources Secretariat would be created.

Mr. Raymond and I have a memorandum of understanding that is quite detailed that specifies the processual part of it—what happens to the bits of papers, the certificates, the orders in council, the permissions, the waivers and so on that have to go through the Civil Service Commission—recognizing that, in that sense, we are the line ministry, if you follow what I mean, while he is responsible for monitoring the merit principle and ensuring that waivers are used, not indiscriminately but fairly and in a neutral fashion. My people are the payroll people, the personnel people, the people who do the majority of the work.

We have a memorandum of understanding and his organization meets on a fairly regular basis to approve senior appointments, as in the mandate specified in the legislation.

In terms of employment equity, while the Civil Service Commission has an interest in ensuring that employment equity is attained, the responsibility for the framework lies with the Human Resources Secretariat and squarely with Mr. Elston and myself. Does that answer your question, Mr. Velshi?

Mr. Velshi: Yes, I think so. Just a few questions, Mr. Chairman, if you do not mind; two or three things: As I see it, from what you have said, there are two roadblocks. One is at the point of entry, when somebody is being interviewed, and the other one is upward mobility once a person is in. Whatever else you do, those are basically your two roadblocks.

The problems that have come to my office invariably come after it is a fait accompli; somebody else has been taken on for a position and it is not possible to reverse that decision. Are you looking into a situation where, either at the point of entry or in a position of upward mobility, once a decision has been made and anybody is employed, it can be overturned within a certain specific period, say, 30 days, so that the manager who is making this decision or the interviewers know that they are liable to be questioned and it could be reversed if it is felt somebody has complained, and justifiably so?

Dr. Todres: I think you have made a very perceptive point and that is that there are two parts, on the affirmative action side, if I may say, as opposed to child care and training and development. There are two essential roadblocks: getting in and mobility. On the entry part of it, if I might comment for a moment, there are a number of ways of trying to deal with the entry problem. One of them is to have, as you suggested, a check, which incidentally the federal government has. The downside the federal government has experienced is that for reasons other than employment equity, many competitions are contested.

To give you a hypothetical example, two or three people might be up for a job. Let's say 10 people are up for a job. The offer is made. Nine other people do not know whether they have won or lost. Number two person finally finds out that he or she did not get it. There can be four or five months of dispute resolution in the federal government as to the competition, the questions that were asked, the requirements, the job testing and so on. In the



meantime, the manager has no one in that position and a great deal of doubt.

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I should say that it is always very difficult to compare apples and oranges; the labour management climate in the federal government is very different than ours. The proportion of unionized people in the federal government is much higher than ours. Theirs is something like 90 to 95 per cent of all staff unionized. Ours is something like two thirds, roughly 50,000 to 55,000 out of 80,000 plus or minus. So the proportions are different.

That is one route and one would have to examine what that would mean here: how one would have to negotiate that with the union, what the dispute resolution was and whether it would be a Pyrrhic victory. By that, I mean there are ways of eliminating systemic discrimination that do not harm the candidate in question, or that they harm that person less than other routes. Always remember, of course, that we do have the Ontario Human Rights Commission which is anxiously looking at systemic discrimination and, in fact, has set up a systemic discrimination unit. It does not make a distinction between what happens in the Ontario government; its mandate is province-wide.

The other route, if I may say, which has been suggested by a lot of the lobbyists and the coalitions which have come before me, is to consider altering the composition of the interview board, because that is where a lot of the action takes place. You come in, you read a job description and, particularly if you are from the outside, it is quite difficult to imagine what precisely the job entails, what the climate is, what your director or assistant director or supervisor actually requires of you.

It has been suggested to me that we try to ensure that there be employment equity representation on the board, so that a minority, that a member of a charter group, not face a monolithic group that is not sensitive to different cultural attributes, that is not sensitive to the needs of the disabled, that is aware of the fact that with a blind person one does not give a written test. I do not say this as a joke, I say this as something that is commonplace; we do not have the facilities yet to transcribe everything we do in Braille. The deaf have their own concerns and that is that they are the most invisible of all of the disabilities and that we are not at all prepared, as a society, to deal with the issues they have. One suggestion has been put to me to change the composition, or direct or suggest or recommend to ministries that it not be the case that you not have at least one charter member sitting on an interview process.

Another option which has been considered is to have, I guess, what the Americans call an oversight committee within a ministry, that there be some—I must commend a number of ministries which have already done this, which have established, for example, visible minority committees that look at competitions, that watch appointments, that check out questions, that try to ensure in their own way that there is no gender bias.

I think you are very astute in the observation about the problem. The question is: Is there any one particular way of fixing it, and is there a whole range of ways?

One of the thoughts I have had is that, in our training program, in this particular field, one of the most important lessons or one of the most important heuristic tools we could provide as the central agency—I am Ms. Trainer; I am responsible for corporate education and corporate

training—would be to consider mandatory programs. In order for you to move along, the expectation is, just as it would be at IBM or General Motors, that you have to take health and safety courses or you have to take salesmanship courses or whatever. By the way, some of our private sector colleagues have bottom-line courses; I had thought this was self-evident, but they do have training on the bottom line.

We would require people, particularly at the supervisory level, to take certain courses on multiculturalism and diversity, that we would explain in operational terms how you conduct an interview that is not biased, how you actually ensure that, if a person comes from another culture and from another country where that person is not accustomed to making eye contact, or that person speaks with an accent, the white majority in that room, male or female, born in Ontario, does not conclude that this person has poor interpersonal skills but recognizes that this person is a very respectful person and is operating within his or her own cultural milieu. I think there is a role for us to play, and I suspect that the answer is not unidimensional. I suspect that on the entry side there is a whole host of things that have to be done by the Human Resources Secretariat, through the Human Resources Secretariat and in the individual lines.

Your point about once having come in is also a very serious point. How do you ensure that people do not become trapped in what the employment equity jargon calls job ghettos?

Mr. Chairman: If I could just interrupt, pardon me, but we have gone on for some time here and we have some members who want to ask questions, other than the two that have been asked. If we could just keep our answers very short and precise, we would appreciate it very much.

Dr. Todres: Sorry, sure.

Mr. Chairman: Have you any further questions?

Mr. Velshi: No, let's go ahead. If there is more time, then I shall continue.

Mr. Furlong: Did all the civil servants belong to the union? How many of the—

Ms. Todres: There are 55,000 who belong to the union.

Mr. Furlong: What happens to the other 40,000—some—odd? Are they management?

Dr. Todres: We have 12,500 that are called MCPs. That means they are exempt under the Crown Employees Collective Bargaining Act. They are exempt from the obligation to be within the union. This is something that is negotiated with the union members.

Mr. Furlong: Who are they? Are they management? Are they considered the management side?

Dr. Todres: Some of them are managers. The classification is called MCP, management compensation plan, but it is a misnomer. They are a combination of supervisors, managers, sometimes they are technical specialists: scientists, pickerel fish engineers, biologists.



Mr. Furlong: What about the rest?

Dr. Todres: There are 650 people who are executives. Now my numbers may not be right, but that is roughly the proportion. The accurate number for MCP is 12,500, and 650 is accurate for the number of executives in the civil service, but I can—

Mr. Furlong: The rest would then be part of the collective bargaining process?

Dr. Todres: Right.

Mr. Furlong: We are reviewing the Civil Service Commission, and I guess I have come to some decision in my own mind as to what we should be doing with this body. It strikes me you have virtually taken, well 90 per cent of what it used to do, it now to your secretariat. I guess my question to you is why do we need the Civil Service Commission?

Dr. Todres: That is a question that you must ponder and that I cannot. The whole question of the utility of the Civil Service Commission and the maintenance and merit is something that is going to have to be considered in the rewriting of the Public Service Act.

Most Anglo systems—and I mean by that in the tradition of British parliamentary democracies with the tradition of nonpolitical patronage appointments in the civil service—have a long tradition of some unit somewhere, whatever it is called, enshrining the principle of merit and ensuring that merit is attained. I take your point, I am just not in a position to comment on it.

Mr. Chairman: Could I have a supplementary to that? Do you feel the Human Resources Secretariat should be doing more of the work that the Civil Service Commission at one time did? I have a hard time, just as Mr. Furlong does, in drawing a parallel between the two functions. We are reviewing the Civil Service Commission. That is why we wanted you in, to give us some points of view of where you feel the Human Resources Secretariat is taking over from the civil service.

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Dr. Todres: Maybe I could answer it this way: In my recollection, having been a civil servant for a number of years, the focus in prior times—and I do not just mean in terms of prior administrations; I am talking societally—the personnel function, the civil service function, the management of people in organizations, both public and private, was considered to be fairly reactive: Make sure there are no strikes if you are in a strike—we do not have the right to strike in our union, but keep it down, do not give me any problems.

Very few chief executive officers 10 years ago would have met directly with their vice-president of employee relations. Although there was a lot of lipservice to people as an asset and all the rest of it, we have not yet come to the realization that we have a real scarcity-of-labour problem. We are dealing with the demographics of the baby boom and better pay attention to this, not only for reasons of international competitiveness or whatever.

In the past, the Civil Service Commission was instructed, in my opinion, to be reactive, not proactive, and acted according to its instructions, and

acted well. Its labour relations approach was a reaction to union demand. Its classification system was: "We'll put it into place and we'll see how it works out. We will have a minimal level of corporate initiative."

I think what happened was that there was a decision that we must be proactive, and what you are saying to me is that the majority of the policy thinking and the line delivery is no longer in the hands of the Civil Service Commission, it is in the hands of the Human Resources Secretariat.

Mr. Furlong: I want to be clear, and we do not have much time. If the Civil Service Commission was to cease to—it is my understanding that most of the ministries, and probably through direction from your office, monitor their own merit principle. It is there, they function. My concern would be that if we recommend that the Civil Service Commission no longer exist, would we simply be transferring that money and you creating a role within your operation, your secretariat to say, "All right, now we have to look after the merit principles." Are we just simply going to say, "Take the \$500,000 from here and put it in your operation," or can we say, "Do away with this thing, it is really not needed," and save the \$500,000?

Dr. Todres: I am hesitating only because I suppose this is a question that an elected representative is better able to answer than I. Notwithstanding the allocation issue and the dollars in the Civil Service Commission, there is a function that is meritorious. Where it ought to be located is a genuine question for you, and for me too. It is important for someone at the centre to be watching that there is not an indiscriminate use of waivers of competition.

What is a waiver? A waiver is where someone makes a very good case, a compelling case that there will not be an open competition and that Joan—I was going to say Joan Smith, but that John Doe or Jane Doe is not given a shot at it because the incumbent who was there for two or three years in an assistant director capacity is suddenly waived into the job. That presents a lot of problems from the perspective of employment equity.

When you have things in 26 different ministries, even though ministries are attempting and in good faith watching that waivers are not excluded, you can make the argument, and I think it is a good argument, that somewhere at the centre, maybe not the Civil Service Commission, but maybe it is the Civil Service Commission, that function ought to be retained. I guess the difficult question for you is just where ought it to be retained? I have to say that I do not have a view on it.

Mr. Chairman: Thank you. Any other questions? Well, we thank you for appearing before us this morning.

Dr. Todres: My pleasure.

Mr. Chairman: We will get the Hansard and read the full gist of what you had to say, and perhaps some of it will be incorporated in our report. Thank you very much.

Dr. Todres: My pleasure.

Mr. Chairman: OK, we will have a five-minute break. At 11 o'clock, we will be here with the Ontario Securities Commission.

The committee recessed at 10:55 a.m.



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Mr. Chairman: I call the committee back to order. We have Mr. Beck with us now. Mr. Beck, do you have a few opening remarks you want to make? If you have, perhaps you could at that time indicate whom you have with you for the record, and if you have a short presentation.

#### ONTARIO SECURITIES COMMISSION

Mr. Beck: On the left is the vice-chairman of the Ontario Securities Commission, Charles Salter, and on my right is the director and chief operating officer of the commission, Ermanno Pascutto. I am Stanley Beck, the chairman of the commission.

Mr. Chairman, as you know, my colleagues and I spent the better part of two days with you ladies and gentlemen some few months ago reviewing the operations of the commission, and then supplied some further material. As I understand it, you have asked us to return today to discuss the commission's conflict-of-interest policies? Am I right?

Mr. Chairman: That is part of what we want to discuss with you. We are looking for more input into our committee report. I think the conflict of interest is one of the main areas we wanted to key in on.

Mr. Beck: OK. The committee's conflict-of-interest policies are really divided into two policy statements: one is policy 2.4 of the act, and for those of you who have the 1987 or 1988 act, it is page 3-142, I believe. The policy 2.4 is rules relating to the trading in securities and commodity future contracts and options by members of the commission. By members of the commission, they mean the commissioners, that is, the chairman, the vice-chairman and the seven other current commissioners; staff includes all other employees of the commission.

Perhaps I should preface my remarks by saying that the two policies, 2.4 and 2.10, are specific to the commission and go beyond what is in the Public Service Act and the regulations to that act, as well as in the Manual of Administration, which, of course, are binding on members of the commission.

We are subject to those rather more general conduct policies and conflict-of-interest policies, and then because of the nature of the business which the commission regulates and its sensitivity with respect to the trading market, far more detailed and specific policies are required than those found in the Public Service Act and in the Manual of Administration: hence, policies 2.4 and 2.10.

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I will just generalize with policy 2.4. Because of the fact, as I have indicated, that the Ontario Securities Commission has oversight of the entire trading markets in Ontario, that is, stocks, bonds and commodity futures, we require a high level of integrity and knowledge of our clients with respect to dealing in securities. Because the essence of a fair securities market is a free flow of information, we require, therefore, the filing with us and the timely disclosure of statements.

Sometimes that information comes to us on a confidential basis where, for one reason or another we allow under the act, disclosure to the public is not timely or we are getting prior notification of a takeover bid or some

other corporate arrangement that could have an effect on the market. It is essential that all the employees and all members of the commission behave with the utmost integrity with respect to any information that they have but, beyond that, with respect to their own trading accounts in the market and their own relationship with those who are registrants with the commission.

The general policy, which is set out there in paragraph B, highlights that statement. Perhaps I might just read a couple of sentences there which I think summarize what we are attempting to accomplish in 2.4. It says:

"In view of the effect which commission action frequently has on the general public, it is important that members, employees and special employees maintain high standards of honesty, integrity, impartiality and conduct. They must be constantly aware of the need to avoid situations which might result either in actual or apparent misconduct or conflicts of interest and to conduct themselves in their official and personal relationships in a manner which commands the respect and confidence of their fellow citizens." That is the general statement, but I underline it as being particularly important.

Then we have the general provisions in paragraph C: (a), acting on confidential or nonpublic information; (b) "act in any manner, whether or not specifically prohibited by these rules,"—which is important—"which might result in or create the appearance of...." "Creating the appearance of" is important too. It is basic and fundamentally important that the public has confidence in the integrity of the commission. After all, it is the commission which the public looks to for ensuring the integrity of the trading markets, and the public must have confidence in the commission, in the fairness of its rules and in the integrity of its employees.

Then there are the five specific matters: "Using public office for private gain; giving preferential treatment to any person;"—because people are dealing with the commission in high-profile matters all the time. Time is of the essence in the securities market, and we are always under pressure to give speedy treatment or speedy clearance—"impeding government efficiency or economy; losing independence or impartiality; or affecting adversely the confidence of the public in the integrity of the commission."

Then we come to paragraph D, which deals specifically with securities transactions, and securities are defined very broadly. You may note that transactions include those effected by relatives of an employee who have the same house as such person for their own account, etc.

Paragraph 2 says no one shall purchase or sell securities with knowledge of a material fact, trade in commodity futures with knowledge of a material fact, inform another person, other than in the necessary course of his duties, about a material fact which has not been generally disclosed, and the same with commodity futures contract.

Paragraph 3 is important. It says that no member or employee, where there is a prospectus filing or an application for a decision, order or ruling under the acts "shall trade any security which is the subject of such filing or application, or any other security of the same issuer," which is an important prohibition also.

One turns the page there to paragraph 5: "If any person or company is under consideration or investigation"—again no trading in any related securities, no interest in any dealer or adviser through the ownership of securities or otherwise, and I think there essentially you have it.



Then in paragraph E, a general requirement to report to the directors with respect to certain matters, although there is not, I would point out, a requirement to report trades.

Mr. Chairman: Mr. Beck, if I could ask, how much longer do you anticipate speaking?

Mr. Beck: Oh, about three or four minutes.

Mr. Chairman: Thank you. There are several questions.

Mr. Beck: I would note in the context of some changes that we are now considering that there is no general requirement to report your trade. There are just the prohibitions with respect to conduct, and then the certificate of compliance which every commissioner and every employee is required to sign each year.

Policy 2.10 deals with the matter of employment after one leaves the commission or, more accurately, with appearing before the commission after one leaves the commission. There was concern with respect to the position of the chairman of the commission. The question arose as to what is the propriety, and again, the appearance of a chairman or a former senior officer of the commission leaving the commission quite legitimately, seeking employment elsewhere with a law firm or an accounting firm, or a member of the financial community, and within a couple of weeks, showing up and representing clients before the commission.

There was some concern about that several years ago and the result is policy 2.10. We have what we call cooling-off periods for four separate classes of employees at the commission. The first class is the chairman of the commission, who is to have no contact with the commission on behalf of clients for a six-month period after leaving the commission. The vice-chairman and the director have a three-month cooling-off period of no contact. Deputy directors and professional staff who have been with the commission for at least two years, that is, the lawyers and the accountants, have a cooling-off period of one month. So that is essentially what 2.10 says.

So that is the general scheme. I will just take one moment to say that we have had the policy under review for the last several months. We have particularly taken a look at the requirements of the Securities and Exchange Commission in the United States and at the Quebec Securities Commission which has essentially tracked much of what the SEC has.

We will be presenting to the commission for discussion shortly, a revised policy that will tighten up 2.4 considerably, in the sense that there will be a requirement of purchasing for investment purposes only, which means no short selling, no trading on margin, no futures trading, a hold period of at least six months, a requirement to report the transaction within five days and, generally, a filing with the director of a financial statement on taking employment and annually thereafter. I think one can say we have taken a look at our policy and have decided it certainly could use some improvement, to move from what one might categorize as a self-regulatory stance subject to broad rules, to a more active enforcement role in terms of our own conflict-of-interest policies.

That is the conclusion of my opening remarks, just to set the context.

Mr. Chairman: Thank you. We have some questions. I have one I would

like to start off with. Under part VI, section 11 of the Ontario Securities Act, is that policy followed all the time when you want to do an investigation?

Mr. Beck: Sorry. This is section 11?

Mr. Chairman: Yes. It has to do with the oath—they have taken an oath—in order for you to investigate a trader or anyone who is involved within the Ontario Securities Commission.

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Mr. Beck: This is a formal investigation order. That is right. I am sorry. The question is what?

Mr. Chairman: The question is, are there any investigations done without that taking place?

Mr. Beck: The answer is yes. Many of our investigations are informal. Subsection 11(1) is premised on the fact that it appears probable there has been a contravention of the act or an offence has been committed under the Criminal Code, and you appoint a person to make an investigation. The reason that has to be under oath, to indicate a breach of the act or the Criminal Code, is that the powers in subsection 11(3) are extremely broad.

Mr. Chairman: But the question is, sir, do you do the investigation without going through that procedure in section 11?

Mr. Beck: We might, in an informal way, an informal investigation, but not in a way that would see us use any of our powers, because we could not unless we had gone through the formal procedure.

I suppose it becomes definitional, almost, in some ways. What is an investigation? We are in the process of making enquiries, if you like, or almost what would amount to an informal investigation constantly, and then at some point you may move to a formal investigation, where we want to look at records, where we want to examine people under oath. So you move over the line from an informal to a formal.

Mr. Chairman: Say with a stock transaction; you could investigate that without going through that section.

Mr. Beck: Sure, we can make a phone call.

Mr. Salter: I should add that many of our formal investigation orders are made at the request of the party we want to interview. If we want to talk to a bank, the bank will say: "Mr. Securities Commissioner, we are delighted to help you, but we have this duty of confidentiality to our customer. Give us an order." So an investigator, with due process, gets an order from the commission, serves it on the bank and then the bank is able to co-operate with us.

Mr. Runciman: Just as a follow-up, do you ever undertake an investigation based on an anonymous tip, an anonymous phone call?

Mr. Beck: Yes.

Mr. Runciman: I have personal problems with that one. It seems to me that sort of thing could create a lot of potential embarrassment, if not



damage, to the individual who has been complained about, or firm or what have you. You initiate enquiries based on an anonymous phone call. It seems to me that is an inappropriate way to deal with the situation, but I can understand where you are coming from, too; perhaps some of your good tips come that way. But certainly, if a complaint is lodged with my office, or I would think—A complaint lodged against me a number of years ago with the Attorney General was an anonymous tip, and his view in that respect was that we simply do not deal with anonymous calls or letters. We certainly do not want to see you handcuffed either, but I think there is a fine line there.

Mr. Beck: Yes, there is a fine line and one has to be careful. That is why we have the rule that we never comment about investigations, although we are pressed to very often, unless they become a matter of public record. We never indicate whether an investigation is under way or not. The industry and the institutions are so used to questions, many of which seem innocuous to investigators at the Ontario Securities Commission or even at a more senior level, that they usually would not think of a question.

When one gets an anonymous tip, one is very careful. You can usually tell fairly quickly whether there might be something there, whether it is just a crank or someone who has a personal grievance or whether there might be something that does require a broader investigation. You are right that it is a fine line. You want to be careful. But also, you do not want to be in the position—let's take the extreme example—where a major fraud might be there and because it was an anonymous tip, you did not make the initial inquiry or something.

Mr. Runciman: There are a number of topics I want to touch on, but I guess one that is related to that—you can say quickly to the chairman whether it has any validity or not—ties in again with the average age and average experience levels of your staff, which is a concern we have expressed to you before. Maybe the comprehension level is not as high as it may or could be or hopefully would be.

Talking briefly about the conflict of interest, you are talking about reviewing it. I guess I brought this question into the House a couple of weeks ago with respect to Mr. Reid's departure from the Ministry of Financial Institutions and the questions that arose from that. I would prefer to see the government deal with it on a broader basis across government, rather than on an ad hoc basis with this agency and that agency and so on. The feds have brought in a requirement that senior management levels and above—on occasion below senior management level—cannot work in an industry that they have been regulating for a period of one year. How do you feel about that kind of regulation, law or guideline being instituted at the provincial level?

Mr. Beck: I read about the debate with respect to that and I understand the concern. It is the same concern I indicated with respect to our cooling-off period: the appearance, the concern about perhaps dealing with respect to your future employment while you are still employed by the particular agency. On the other hand, in an agency like the securities commission, where for good or for ill there is a fairly high turnover, and I guess always will be—our sister agencies elsewhere in the world have the same problem at about the same rate of turnover—it is important that people not put up barriers or deterrents to employment with the agency. The fact that one is working for civil service pay scales as opposed to what is available in industry is a significant deterrent as it is.

It is a nice question. It is a balanced question. It is what is

appropriate and the propriety of seeking employment while one is still with an agency, or perhaps immediately going to work for an agency one has been regulating and appearing before—that is a difficult question—as against blocking employment opportunities.

Mr. Runciman: I guess I have some concern. You consider it a deterrent, and I guess it is, but I do not think it is as significant a one as you may. I guess we will have to take a look at the federal experience as well.

We talk about how the OSC staff could be considered the ultimate insiders and I want to talk a bit about the Malcolmson case. You may be limited in what you can say about that, but the OSC staff to some extent knows every deal, new issues, mergers, etc. I am wondering why you do not require staffers to report stock trades.

Mr. Beck: As I have indicated, we are in the process of taking a look at our policy, and indeed have been for some time. I think we are going to recommend that kind of change. I think 2.4 might be characterized, as I have said, as a self-regulatory thing, subject to broad rule. I think it is appropriate in my view. It has not come to the commission yet for discussion and ultimate approval. I think it is the time to move to a more active enforcement mode and do what both the Securities and Exchange Commission and Quebec require; that is, the reporting of trades within a very short period of time to the director and to the chairman. I think that is an appropriate suggestion.

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Mr. Runciman: In the Malcolmson case, the investigation was launched in July 1987 and his resignation was effective in May. From what I have read, in any event, he did not violate 2.4. I guess, based on the appearance of conflict, you are concerned about the appearance of conflict. If this story had not broken in the press, I guess I am curious, would he still be with the securities commission? Was that a coincidence, the story breaking in the press and his soon-thereafter departure?

Mr. Beck: I think there are a couple of things I should clear up, and at the same time I want to be fair to Mr. Malcolmson. As you quite rightly point out, since the summer of 1987 there has been an Ontario Provincial Police investigation, at our request.

In the context of the OPP investigation, and quite late on in the investigation, certain information with respect to Mr. Malcolmson's trading accounts became public and the fact of that trading has been in the press since Mr. Malcolmson's resignation. When we had all the facts with respect to that trading, and that was not until towards the end of this March, we discussed them with Mr. Malcolmson and I think it was agreed between us that a resignation would be the appropriate course in the circumstances.

However, in fairness to Mr. Malcolmson, it was my preference and the preferred position that this not be made public until such time as the OPP investigation was concluded, because it is simply unfair. Mr. Malcolmson now lives under this cloud, if I might put it that way, to a certain extent, with respect to the allegations that were made that started that investigation. I am hopeful and have every expectation that will be concluded very much in Mr. Malcolmson's favour, but that is separate and apart from what turned up with respect to the trading accounts.

In the sense of that, the fact the OPP investigation became known to the



press, it was felt it was simply better to go with a resignation at this time, but it was not the press, if you like, that led to the resignation. That decision was taken before there was any public awareness of the fact of the investigation. It is just that the timing of the announcement was moved forward. In fairness to Mr. Malcolmson, we would have liked the OPP investigation to have been concluded.

Mr. Runciman: In fairness to Mr. Malcolmson, could you not have addressed it in another way and simply reassigned him to nonmarket areas of responsibility until the investigation was completed?

Mr. Beck: We discussed that. I think I would just prefer to say that it was agreed between us, without much difference between us, that in all the circumstances of the case, a resignation was probably best. It is very difficult, when those kinds of circumstances become public, to reassign a person within the agency.

Mr. Chairman: In all fairness, I think we do not want to get into too many specific cases. I think if you have some other questions, Mr. Runciman, maybe we could go on to them. We really want to review the overall running of the commission, but not to talk about any specific case unless it pertains to the unfair way the commission has been doing something.

Mr. Runciman: I tend to disagree. I have a couple of more questions about Mr. Malcolmson, because we are really talking about conflict of interest and it relates to this gentleman specifically, recently:

I have one other question. Mr. Salter was around when Mr. Malcolmson was retained. You did not appear to have any knowledge of known trading practices of one of your top people. I am wondering what practices you follow in terms of checking the backgrounds of prospective employees. Some of these may be unfair to Mr. Malcolmson with respect to the press reports about the Western Allenbee Oil and Gas shares and the connections of the principal in that company to one Irving Kott. I guess that is one of the concerns you must have had when you were making your recent decisions. I am just wondering why that was not detected at an early stage, or those kinds of concerns that are arising now.

Mr. Salter: In responding to that, Mr. Malcolmson's connections in the more active, some would say rambunctious, area of junior mining and junior industrial stock financings were indeed known to me and were, in my view, a source of strength in Mr. Malcolmson. The junior end of the market, in some of its segments, tends to give us grey hair at the commission, and somebody's expertise in that area can be, and was in Mr. Malcolmson's case, very much a plus, very much a point in his favour.

When I was interviewing him in the spring of 1982, Mr. Malcolmson mentioned certain clients he had acted for in the past. Mr. Kott's name was not among them. I do not recall if Mr. Abernathy's name was among them or not. Certainly the late Mr. Abernathy was a colourful and very active character in the junior mining and oil and gas markets.

What I would like to stress is that the connections broadly with the junior markets were again a source of strength and a matter we considered a plus when considering Mr. Malcolmson's wish to join the commission. As with all Ontario Securities Commission employees, a police check was carried out and there was no negative report to me off that. I hope I have answered the member's question.

Mr. Runciman: You were aware of the Abernathy payment, if you will, of shares of Western Allenbee and you felt there was nothing inappropriate?

Mr. Salter: I was not aware of that payment until it came to the attention of the commission via the police investigation.

Mr. Runciman: Is that something you should have been aware of?

Mr. Beck: Just (inaudible) the timing.

Mr. Runciman: I am not sure about the timing.

Mr. Beck: The services were performed before Mr. Malcolmson joined the commission. The payment by Mr. Abernathy was made when Mr. Malcolmson was at the commission, in 1986, I believe, for an account that was outstanding. That is (inaudible) Mr. Malcolmson, so Mr. Salter would not know that.

Mr. Runciman: I will move on quickly to another subject and maybe we will get a chance to get back to Malcolmson.

Mr. Chairman: Just before you do, I have a supplementary on that last question you had. Why would you not have an oath of office for your directors or associate directors or commissioners? Why should they be involved in any trading that goes on whatsoever? If they are there to operate and run that organization, why should they be allowed to invest and take part in any trading? It just does not seem right to me that they should be able to.

Mr. Beck: That is a fair question. In revising our policy, we cast our net fairly widely and looked at all the major securities agencies, particularly the Securities and Exchange Commission, which has had the longest experience, and what has been done elsewhere. We have not been able to discover, at least to my knowledge at the moment—we are checking the new rules in the Securities Investment Board in the United Kingdom, which is the newest major securities agency in the world, and we have not received an answer back yet.

None of them has a flat prohibition like that, but it is something to consider and it is a fair question. Whether that is too stringent or not, one may well have the view that it is part of the price of working for a securities regulatory agency.

Mr. Chairman: What have you in place to stop the same thing that happened to Mr. Malcolmson from happening again?

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Mr. Beck: That is the kind of question that applies to any government employee with respect to the Public Service Act or working for any agency. There are rules of conduct set up, and you do not have anything in place that is going to absolutely prevent a breach of whatever the standards are. That may happen in any agency or any branch of the government.

Certainly, an absolute prohibition on trading in that aspect of the conflict would take care of that, unless someone were going to do a deliberate end run around it, which is certainly not Mr. Malcolmson's case.

Mr. J. B. Nixon: It is almost obvious, but I will ask. Is it fair to say that even an absolute prohibition on trading and securities could be breached? An individual could cheat.



Mr. Beck: Sure. As I say, if someone wants to do a deliberate end run or have a secret account or an offshore account, you can have that. That is not going to prevent that.

Mr. J. B. Nixon: Ultimately, enforcement of that rule and discretion in applying that rule —

Mr. Beck: Depends on good faith, on the integrity of those who work for the agency.

Mr. Furlong: Sir, the last time you were here you indicated that there was some difficulty in retaining staff at the commission, and from some of the questioning that has gone on so far this morning, it would appear that some of the members would have these rules tightened up: no trading, lock employees in, they cannot deal with the commission for a time afterwards.

My concern would be that as you prepare to get some of these rules in place, is that not going to compound your problem? I do not know why anyone would go to work for you for \$75,000 a year if he were locked in for the rest of his life.

Mr. Beck: Let me say first that I would be delighted if I could pay many of my people \$75,000. That is number one.

Second, I think it is reasonable in an agency such as a securities regulatory agency that you have pretty tight conflict-of-interest rules. I think people appreciate that.

To come back to the point that Mr. Furlong made, that is, employment after one leaves the commission, I worry about the deterrent effect of too tight a rule in that area. On the other hand, I am very conscious of the appearance of things and what the public may think when someone flips over and all of a sudden is representing the person whom he regulated the day before.

I think there are some real problems with that also; similarly with an absolute prohibition on trading. I think that might be too tight. But again, I can see the argument on the other side, so there is a fine line to be drawn there.

Mr. Pascutto: One of things we might note is that we have a fair number of people whom we attract to the commission on a secondment basis from the private sector. Our general counsel is a seconded person from a law firm. Our chief accountant is a secondment from an accounting firm. In addition to that, we have at least six other professionals within the organization who are secondments from the private sector.

I venture to say that close to all of them would have some investments in the market. If we were to have a blanket prohibition on their trading, we might have a difficult, if not an impossible time, attracting those people to work for the commission.

Generally, they are making some kind of financial sacrifice to join us in any event, and to impose a requirement that they dispose of their shares in the Bank of Montreal or a mutual fund—they may have their retirement savings plan invested in a mutual fund, for instance, which obviously they could not in any way affect—might impose enough of an additional hardship that it might tip the balance against their joining the commission.

In looking at the policies, we were trying to balance the types of

investments about which we may have information at the commission that could affect the investment. You have a whole spectrum of investments, about some of which we may have information and about some of which we clearly would not have information. So we want to look at the spectrum of investments.

I think we want to look at the type of person who is involved. It may be that you would want a different standard for a secretary than you would have for the director of the commission. We want to look at how any requirements we impose on our staff impact on the rights of the individuals.

One of the things we want to look at, for instance, is the collective agreement. If we are imposing these standards on members of the Ontario Public Service Employees Union, we want to ensure that anything we do does not offend anything in the collective agreement in terms of the rights of those individuals. It is a very complicated balancing process.

Mr. Chairman: OK. Could we get back to the direct questions? Mr. Runciman, Mr. Nixon and then Mr. Furlong are on my list.

Mr. Runciman: I think reporting stock trades would handle that. I am always struck by the irony of the restrictions we place on politicians. When we talk about the civil service and regulators, there is always concern about your having even comparable restrictions placed upon them.

I want to talk a bit about the insider trading investigation that has been going on for some period of time, I guess a year and a half. We have been told it has involved up to one third of your staff plus outside counsel. I am just curious. How much have you spent on this investigation to this point? Do you have a handle on that? Ball park?

Mr. Beck: The director is the best person to deal with it. I would say, ball park, the figure would be about \$500,000 to date, but the director, who is in charge of the investigatory area, can speak to that.

Mr. Pascutto: The figure is fairly accurate, and we have funded that to date out of our existing budget; there has been no special allocation to fund it. In addition, whatever press reports may be out there about the amount of resources we have devoted to it are inaccurate. We have approximately four or five of our professionals from the enforcement branch involved in the investigation, a couple of support staff, and then we have retained some outside consultants, including junior members of an accounting firm and some market consultants who can interpret trading for us. That is where the approximately \$500,000 would have gone to. The investigation has been in place for just over a year; it was started in March 1987.

Mr. Runciman: I guess in this situation you do not have a budget or a timetable that says—

Mr. Beck: No.

Mr. Runciman: Do you see any end in sight?

Mr. Beck: As you may know, the OSC's power under section 11 to bring in a registrant and question him with respect to a particular investigation is indeed being argued at this very moment in court. So everything has been on hold depending on the outcome of that decision. Then we may have some decisions to make ourselves depending on what happens in court.

Mr. Runciman: What are the implications for your agency if section 11 is found to be unconstitutional?



Mr. Beck: I think the investigation power in section 11 is critically important to us. I think it extremely remote, and indeed the challenge to it is not root and branch, as it were; it is just the way it is now structured. It would be a matter of amending the statute and rather channelling the powers we are given in a way that is consonant with what the court may say is required under the charter.

That has happened, for instance, to the combines investigation branch after the Southam decision in the Supreme Court. It simply said the powers were too broad, that it had to be more like a search power, where you go to court and get the warrant, etc., and the act was amended accordingly. Our powers would not disappear; they are critical to us. We just may have to channel them.

Mr. Runciman: But it would probably kill this particular investigation.

Mr. Beck: I prefer not to comment on that at this point, Mr. Runciman. We will abide the event.

Mr. Runciman: OK. Perhaps you cannot talk about the status of the investigation, but I know I have read one newspaper article where apparently it was widely regarded on Bay Street as a fishing expedition and I wonder how you respond to that.

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Mr. Beck: I can understand how that attitude may have come about. It is a broad-ranging investigation. Members of the press have characterized it as an insider trading investigation and they, like everyone else, were hypnotized by Mr. Boesky and his antics in the United States and said, "Well, we're looking for the same thing here." It simply did not begin that way, and we do not go out on investigations trying to prove we are as good as the SEC. That would be irresponsible to the nth degree.

It could be more accurately characterized as a front-running investigation; that is, where traders for institutions know they are going to be placing major orders, senior traders and the investment dealers know those orders are coming in, and between them they themselves have placed orders and then the institutional order is placed and the last shares sold to the institution are the shares that they bought. They are making a quarter, a half or whatever on the trade, and if they are big trades and you are doing that constantly, you can make a lot of money. You may characterize that as a form of insider trading. It is knowledge about trades that are coming.

The reason I think it was characterized as a fishing expedition is that we were looking at a significant number of individuals, a significant number of institutions and a significant number of firms, so that our net in investigatory terms was spread uncharacteristically wide. Because of that, the fact of the investigation became public also. We then issued a press release, contrary to a policy I have indicated that we have that we do not comment.

One is talking about a significant number of individuals and an enormous number of trading transactions, which take a long time to piece together, so I can understand why it might be characterized as a fishing expedition, but it is not. If we do not have reason to continue, then we close the investigation down.

Who knows what will transpire at the end of the day? It is very

difficult, using raw material, to piece together securities trading infractions, which is not to say that investigations by themselves may not change conduct or that we may not draft new rules with respect to trading and compliance as a result of the investigation, regardless of what eventuates from it. But it is extremely difficult to piece together a case from the raw trading data.

To come back to the point I made about the SEC, the SEC rarely, if ever, has been able to do that. The Boesky case and Martin Siegal and all the things that fell out from there were walked into the SEC by an informant. If that ever happened to us, we would be delighted.

Mr. Pascutto: If I could comment again and continue on the allegations that this is a fishing expedition, we should note that substantial complaints were made to the commission. It is not something the commission launched on its own initiative. The initial complaint was brought to us by Dominion Securities.

If the complaints or the allegations that are made to us are substantiated, and it involves substantial amounts of money that could be earned by traders at brokerage firms and financial institutions, that represents directly money that has been lost by the investing public. If a trader front-runs an order of an institution, that is a direct loss to the institution and ultimately to the beneficiaries of that institution, whether it be a pension fund or whether it be any other type of financial institution on the street.

To my mind, if the commission failed to follow up on those serious allegations, then we would be derelict in our duty and it would be fair to question whether we were doing our job. It is important to note that substantial allegations were made to us, that it involved the potential for substantial losses to the investing public and that we were following up on our responsibility to investigate.

In terms of our resources, we do not need another major investigation. As you are well aware and as members of this committee are well aware, we have our hands full with the amount of work we have.

You are well aware of the Osler matter that we had before us earlier this year. We are involved in a major accounting case involving National Business Systems. In the last couple of weeks we have had some other enforcement cases which have come to the attention of the public.

The Richardson Greenshields case was settled yesterday with an amount of approximately \$245,000 being paid to the Treasurer of Ontario. We had two sets of convictions in court in the last couple of weeks. Our hands are full. We do not need to engage in fishing expeditions to find enough work to do.

Mr. Runciman: I will yield the floor. I have additional questions if the opportunity is there.

Mr. Chairman: OK. I have a couple of questions that concern me. How many members are there on the Ontario Securities Commission?

Mr. Beck: I think full complement is 156, and we are slightly short of that at the moment.

Mr. Chairman: Does that include the directors and all the—



Mr. Beck: Yes.

Mr. Chairman: I am talking about—

Mr. Beck: I am sorry. Are you talking about the commissioners?

Mr. Chairman: Yes.

Mr. Beck: We have authority to have 11 commissioners, including the chairman and the vice-chairman, who are the only full-time commissioners. The authority to go 9 to 11 was given in the recent amendments to the Securities Act passed last year. We have not appointed the two new commissioners yet.

Mr. Chairman: How many directors' assistants are there? Is it four or five? You are the director. How many assistants do you have?

Mr. Pascutto: We have four. We are going through the process of a reorganization right now. There are four operating branches: commodity futures, capital markets, enforcement and corporate finance. In addition, we are supported by two advisory offices: the offices of the general counsel and the chief accountant.

Mr. Beck: So that would give us six senior officers under the director.

Mr. Chairman: And then you say that there is a staff of 156?

Mr. Beck: Yes. That is full complement. We are not quite there, but we have authorization. I think that is the figure.

Mr. Chairman: I cannot, for the life of me, understand why your staff, your commissioners and those people would not have to take an oath of office that they would not be involved in insider trading or any trading in the stock market at all.

Mr. Beck: Well, they do. They do not take an oath that they will not be involved in any trading. They have the certificate of compliance which is set out at the end of policy 2.4. But I think you are raising again the point you raised before. Why should there not be an absolute prohibition? That is something that we may well consider.

The model that we are looking to is a disclosure model. I think that has been shown to be beneficial, a disclosure and a hold model, that is, you do not trade actively. You disclose and you have to hold for at least six months. You buy for investment; you do not buy on margin. Those sorts of things, I think, take care of the problem without being overly restrictive. On the other hand, I can appreciate the point you are making.

Mr. Chairman: I do not happen to agree with you. My point of view is that I think all the people who are involved should not be able to be involved within trading at all. That is my own personal opinion, however, for what it is worth.

Mr. Beck: OK.

Mr. Chairman: Mr. Runciman, do you have some more questions?

Mr. Runciman: Yes, I do. I have a couple of things, such as the

Laidlaw thing. I guess we would like to hear your views on the ban by the stock exchanges on the listing of nonvoting shares. Do you have any views you would like to bring to our attention?

Mr. Beck: The matter of nonvoting shares has been a matter for three public hearings for the commission in the last five to seven years. Each time we have tightened up the requirements, and the same is true with respect to takeover bids.

There is a substantial body of feeling that nonvoting shares perform a useful service in the market and that the public, and particularly the large institutional investors, seem to have an appetite for them. They are not deterred by them. The Toronto Stock Exchange has tightened up in terms of listing nonvoting shares with coattails and they must be effective in the case of a takeover bid, although there is no statutory requirement of a coattail; that is, an equivalent offer to be made to the nonvoting shares.

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We are always looking at aspects of it. I think we are going to tighten up the disclosure aspect of it ourselves so that shareholders in those companies know exactly what they are getting and what their rights, their legal rights are in a takeover bid.

The 15 per cent premium matter is separate and apart from nonvoting shares. That was a compromise, if you like, in 1978, at the time the takeover bid rules were put in place, to allow the controlling shareholder a modest premium over market. We may well take a look at that in the next round of statutory amendments and ask the investment community for its opinions as to whether we ought to continue that or do away with it. The time may come.

\* Mr. Runciman: I want to go back just a couple of minutes to the Malcolmson thing. I guess I personally have some problems with what transpired there—

Mr. Beck: Right.

Mr. Runciman: —with the fact that there was a period of time while the investigation was being conducted. I think you said it was nine months from the initiation to the time you sat down with Mr. Malcolmson.

Mr. Beck: Yes.

Mr. Runciman: Did you not receive interim reports on what was transpiring? This was initiated whenever, last year in July —

Mr. Beck: Yes.

Mr. Runciman: —and you did not hear a thing about it until—

Mr. Beck: Oh, no. In fact, we did receive interim reports and we did meet personally with the senior officers of the Ontario Provincial Police involved in the investigation. As with any investigation, there are a number of things that turn up, that are tracked down, that turn out to be perfectly innocent. In the course of the investigation, the matter of the Gulf trading turned up. That turned up in December 1987 approximately, and not all the details of that were finally gathered—again, it was a matter of tracing and finding out what the details were—until towards the third week in March 1988.



We sat down with Mr. Malcolmson to discuss his future with the commission on April 5, so it was quite close.

Mr. Runciman: I am having some concern with why. Say in December, for example, when the Gulf transaction came to light, why was he not transferred to nonmarket areas at that point? My problem with this whole thing is that once the investigation was initiated and went through this period of time, he remained in that position of seniority, a very responsible position, and then you determined in your own mind that you wanted to see him stay on until the investigation was completed. It came to public light and then rather than transferring, which I guess in my view perhaps should have been done in December, you felt it was appropriate for him to depart.

I do not know if you can appreciate the difficulty I am having with this. You did not feel it was important enough or serious enough in December to at least transfer him to nonmarket areas, but a few months later you felt it was serious enough that he should leave the agency.

Mr. Beck: All right. That is a fair enough question. Let me come at it in this way: Mr. Turner came on in January 1986. I dealt with him through the fall of 1985. He came on as the first general counsel in January 1986. The general counsels office is really responsible for takeover bids, anything to do with takeover bids, with what we call section 73 applications—that is, a dispensation with the requirement to file a prospectus—and generally dealing with applications from the investment dealers.

Prior to that, Mr. Malcolmson, as associate director, was really the director's right hand with respect to takeover bids and those sort of market-sensitive areas. That is when the Gulf trading took place. Mr. Malcolmson then moved to what we call capital markets and to the deregulation area that we have been involved in, which is a nonmarket-sensitive area.

We discussed that among ourselves at the time the investigation took place and were satisfied Mr. Malcolmson was not in market-sensitive areas. He was heavily involved in drafting rules and regulations and in talking to people who were going to be regulated for the first time as to appropriate rules and regulations. He was not the recipient of phone calls on a daily basis with respect to applications under the act or with respect to takeover bid matters. Those were wholly in the office of the general counsel and the office of the directors.

With respect to the allegations that were made and information we had from the Ontario Provincial Police, we did not feel there was any reason to move Mr. Malcolmson at that time. Again, one is balancing what the allegations are, what one knows, what is being turned up with the rights of the individual and what would quickly become knowledge if a move took place in a small agency.

We had all the facts of the Gulf transaction, as I say, towards the end of March and it was clear to me that there was a serious breach of policy 2.4, and we had our first discussion with respect to Mr. Malcolmson's future with the commission on April 5.

Mr. J. B. Nixon: It has been widely reported that Mr. Malcolmson was the number three man at the commission, and in answer to the earlier question of the chairman, you sort of gave a quick overview of the organizational structure. Within that organizational structure, where did Mr. Malcolmson fit?

Mr. Beck: That is a press characterization: number three person. He

would be one of the seven senior people, if you like, under the commission. There would be the deputy directors, general counsel, the chief accountant and the associate director for special projects, which was Mr. Malcolmson, but it would be inappropriate to characterize him as number three in any way.

Mr. J. B. Nixon: Of course, above all the directors there is yourself as chairman—

Mr. Beck: And the vice-chairman.

Mr. J. B. Nixon: —and the vice-chairman, Mr. Salter, and the other seven commissioners.

Mr. Beck: That is right.

Mr. Runciman: I still have some difficulty with Mr. Malcolmson's departure in many ways, simply because the investigation became public. I tie that to the concern Mr. Furlong mentioned earlier about the fact that when you look at the commission, the average age and the average years of experience, and the concern that is out there with respect to that, Mr. Malcolmson was one of your senior people, someone who had some real world experience.

The feeling comes across that perhaps he was a sacrificial lamb in the sense that we are getting rid of him simply because this has become public, rather than transferring him to other responsibilities until the investigation was completed and then making a determination. That is my concern because of the fact that he was a very senior individual, an experienced hand on deck, and as you have said, you need as many of those as you can get.

Mr. Beck: I certainly agree with you to this extent: He was a senior individual, and as I said publicly at the time of the resignation, had been performing very important and valuable work for the commission with respect to the deregulation matters and bringing the banks, the trust companies and the insurance companies in under the Securities Act, which is a very complex, delicate business which requires a good deal of judgement and understanding of the law. Mr. Malcolmson, under my direction, was leading that effort.

I want to be fair to Mr. Malcolmson. I am not saying anything I did not say in my letter that was made public or has been made public since. As to the transactions in the Gulf shares, particularly the trading in the shares at the time those shares were subject to a takeover bid and subsequent applications to the commission, which Mr. Malcolmson was personally handling, the arrangement of a loan for Mr. Malcolmson in the area of \$300,000 to purchase those shares, which loan was arranged by a registrant who is the self-styled leading arbitrageur in the market—that is a person who trades with respect to particular takeover positions in the market—was a very clear and serious breach of 2.4 and of the particular paragraphs in paragraph C—1, 3, 4 and 5—and paragraph 3 of D, of trading in a security which is the subject of a filing or application. There is just no question about that. It is not a question of its being a sacrificial lamb.

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I would have been personally derelict in my duties as chairman of the commission in not dealing with that matter in the way in which it was dealt with, once all the facts—and I stress all—came to light.

Mr. Malcolmson's resignation at that point was the only possible course



of action. It is extremely unfortunate in the way it worked out. There is no allegation that any information passed, but on the other hand there was a very serious breach of 2.4. On that, I think there is no doubt in my mind whatsoever. On the facts of the case, I cannot see that anyone who was fully informed would have been in doubt about that.

Mr. Runciman: We will accept that. I think you know there are people who disagree with you, but they are not privy to the information you have.

Mr. Beck: Well, they do not have the obligation of being the chairman of the commission.

Mr. Runciman: One final question to Mr. Beck: Do you have any objection to the Provincial Auditor carrying out an efficiency audit of the commission?

Mr. Beck: That is under way. That has been arranged. He has already been in and he has had a preliminary discussion with us. He is going to begin a full audit in September.

Mr. Runciman: The auditor's officer is just shaking his head back there.

Mr. Beck: No, sorry. About whom am I talking?

Mr. Pascutto: It is the ministry auditor.

Mr. Beck: It is the ministry auditor who is doing it.

Mr. Runciman: It is an internal audit that you are talking about.

Mr. Beck: Yes. I am sorry, Mr. Runciman, I misunderstood.

Mr. Runciman: That was supposed to be undertaken between November 1988 and January 1989.

Mr. Beck: Yes, that is right.

Mr. Runciman: I understand that was only going to be undertaken if the ministry were up to its full complement. From information I have received, the ministry will not be up to its full complement.

Mr. Beck: As far as I understand, it is going to take place.

Mr. Pascutto: The audit is going to take place. It is not conditional upon anything. What we spoke to the auditor about were the changes we were going through at the commission at this time.

We are in the process of hiring a lot of our senior staff. A lot of the senior positions are now vacant. We are in the process of filling those positions. We have reorganized the enforcement branch and we are in the process of implementing that reorganization. We said, "Let us complete that process in the next couple of months and then look at the organization as it is structured, rather than trying to audit a moving target."

Mr. Runciman: All right. Back to my original question then: Mr. Beck, do you have any objections to the Provincial Auditor conducting an efficiency audit of the securities commission?

Mr. Beck: No, not at all. I am not sure. I am going to be perfectly frank. I am not quite clear about it. I have no objection at all, but it is not clear in my mind what the distinction is between the audit that is going to take place and what the Provincial Auditor might do. I do not know.

Mr. Runciman: Well, I think across government you may have some discussions on that one, but we have internal audits being conducted throughout.

Mr. Beck: We would have no objection at all and given the fact that we are going through some restructuring, it might be a useful thing at this time in our history.

Mr. Runciman: I think it is helpful to have someone from outside the ministry come in and take a look at the operations.

Mr. Beck: Yes.

Mr. Chairman: Mr. Nixon?

Mr. J. B. Nixon: No, no problems.

Mr. Chairman: I have one last question, Mr. Beck. What agencies have been considered to assist the commission in the redefining of your conflict rules? Are there any or do you already have some in place now that are helping you to redefine conflict of interest?

Mr. Beck: We simply did a survey of our major sister agencies and—I have it here as it were. We just have the rules that are in place at the other agencies.

Mr. Chairman: If there are no further questions, I want to thank you for coming before us today to enlighten us on some of the highlights of the commission.

We have the fourth draft report for members and we will be dealing with it next week.

The committee adjourned at 12:15 p.m.



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

CIVIL SERVICE COMMISSION

WEDNESDAY, JUNE 1, 1988

STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Breaugh, Michael J. (Oshawa NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Furlong, Allan W. (Durham Centre L)

Lipsett, Ron (Grey L)

Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Brown, Michael A. (Algoma-Manitoulin L) for Mr. Dietsch

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Miss Martel

Kozyra, Taras B. (Port Arthur L) for Mr. South

Mahoney, Steven W. (Mississauga West L) for Mr. Lipsett

Clerk: Arnott, Douglas

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Citizenship:

Phillips, Hon. Gerry, Minister of Citizenship (Scarborough-Agincourt L)

O'Neil, Maureen, Deputy Minister



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, June 1, 1988

The committee met at 10:17 a.m. in room 228.

AGENCY REVIEW  
(continued)

Mr. Chairman: We will call the meeting to order. I can deem that I recognize a quorum. We have the approval of the New Democratic Party to proceed without the member who has a problem being here. I think the key people who wanted to ask the questions are here anyway, and the minister is here. We welcome you and your deputy. If you would like to, for the record, just indicate the ministry you and your deputy are with, you may proceed with the statement I understand you have.

MINISTRY OF CITIZENSHIP

Hon. Mr. Phillips: Thank you. I hope you have all had a chance to meet the deputy, Maureen O'Neil, who is the Deputy Minister of Citizenship. I thought I might just comment briefly on my responsibilities as they may impact on the issue before the committee and some of the kind of things that I think are coming to us in the future and again are things that may impact on the deliberations of the committee.

The Ministry of Citizenship has responsibility for the government of our multicultural policy, our race relations policy and immigrant settlement. We work with the native community branch, which reports to our ministry and deals with all the native communities in Ontario, plus the Ontario Human Rights Commission reports to our ministry. So in those areas I do have an opportunity to deal with some of the issues that I know you have been discussing and looking at with the Civil Service Commission.

If I might just highlight two or three things for you that I think are here and will impact on us in the future. I do have an opportunity, as I said earlier, to have the responsibility on behalf of the Ontario government for ensuring that our multicultural policy is implemented. A year ago, as I think most of you are aware, we announced a new multicultural policy. What it says is that we celebrate the diversities of cultures in this province, we believe they are a source of strength and enrichment and we are dedicated in all of our government policies, programs and services we offer to ensure that they take into account and reflect the multicultural nature of the province.

There is not a ministry of the provincial government that currently does not have under way significant initiatives designed to ensure that the Ontario government is responding to the multicultural nature of the province. That is one of my big responsibilities, to work with each of the ministries to ensure that that in fact happens.

You are probably familiar with the statistics but I will just give you a few highlights, because it is extremely important that as a provincial government we are aware of the changing nature of Ontario.

As I am sure you all know, historically in the 1950s and 1960s, 95 per cent of all immigration to Ontario came from the United Kingdom, Europe, and

the United States. In the past 10 years, that has changed very substantially, and about 75 per cent of all immigration to Canada comes from Asia, including East India, Southeast Asia, the Philippines, Hong Kong, China and Korea, as well as some from Japan, Asia, Central South America, the Caribbean and the Middle East. That is quite a substantial change over that period of time.

If we look ahead at the next 10 to 15 years, I believe we should anticipate that immigration to Canada will actually increase over the levels of the past 10 years. That is the federal government's policy. It believes this country needs more immigration, and I personally support that. I think we should anticipate that this immigration will come, as it has in the past 10 years, heavily from Asia, Central South America, the Middle East, the Caribbean and Africa.

To put a dimension on it for you, currently immigration to Canada is approximately 135,000 people a year. That is up from 125,000 a year ago.

The federal government believes that those numbers should increase—it is difficult to predict exactly—in all likelihood over the next five to six years to the level of perhaps 200,000 a year to Canada. That is what the federal minister responsible for multiculturalism indicated to me in a recent meeting.

You are no doubt aware, as well, that about 50 to 55 per cent of immigration comes to Ontario. What I am saying is that as we look currently and we look at the future, I think we have to be very much aware in this province of the current population and also the fact that we are going to continue to see a large number of immigrants.

By the way, when I talk about those numbers, it is still much less than we saw in the 1950s, when we were looking at Canada having an immigration level around 250,000 a year. These are not substantially different numbers than we have seen in the past, but they are increased over what we have seen in the last five to six years.

These people who will come are very well educated, talented people. They tend to be younger, obviously, than our population, and that is one of the reasons why the federal government is very interested in increased levels of immigration. As we look ahead, without immigration to Canada, our population actually begins to decline. That, coupled with the fact that we have an ageing population, means there are some real challenges in terms of the size of our labour force.

That is kind of a short summary of the future environment and what we are dedicated to achieving in our ministry and our government on behalf of everyone in Ontario is to ensure that we have the environment in this province that ensures that everyone has an equal opportunity to participate fully. That is very important now and, clearly, is going to be very important in the future.

As I say, one of my key jobs in terms of handling race relations, multiculturalism, Ontario Human Rights Commission and working with the native community is to do the best job that I can on behalf of all of us to ensure that that happens.

I guess that is really why you probably invited me here today, to kind of sketch out for you some of the issues today and some of the issues for the future.



Just to close, the population of Ontario is approaching, as you know, 10 million and will grow at probably one per cent to one and a half per cent. You can see that an awful lot of the future population growth will come from this immigration pattern, when you recognize that 70,000 to 80,000 a year will come to Ontario through immigration. You can see so much of our future is going to be hinged on that.

I repeat myself, I think the area that I work in is rather fundamental to the future of our province and I wanted to sketch out for you a little bit of the changing pattern and the need for us to be responsive to that.

In terms of employment equity, I know you have had the deputy minister for human resources here to talk to you about employment equity programs in the public sector. I think you are aware, but if you are not I can tell you, that the government has asked our ministry to co-ordinate the look at the policy options for employment equity in the broader public service in the private sector. We have what is called a working task force under way now examining that whole issue of employment equity in the broader public service and in the private sector and we have been charged with co-ordinating that role. Our timetable indicates it will take us a good six to eight months before we complete that process.

Let me stop there and throw it open to questions.

Mr. Velshi: Thank you, Minister, that was interesting. Our mandate is to look into the Civil Service Commission itself. What we have discovered is that everything the Civil Service Commission did was transferred to the Human Resources Secretariat. What the Civil Service Commission is now left with is looking after the merit principle. What is causing us a little problem is: how is it operating within the civil service?

As an MPP, I get a number of complaints and I am pretty certain you get them also, that the upward mobility of people within the civil service is being held back for various reasons, including systemic discrimination. I say that fairly easily now in view of the fact that Dr. Todres also mentioned it, not only as it affects visible minorities but women, the native population and the handicapped. Where does this merit principle remain? Should it remain with the Civil Service Commission and broaden its scope? Dr. Todres suggested that we have employment equity representation on that board. Or do we look at the Civil Service Commission as a body that is dying now and transfer this responsibility to the ministry? How do we do that?

Hon. Mr. Phillips: I am not sure I can give you a definitive answer on that, Mr. Velshi, in that I think we are all agreed that we need to make progress in employment equity particularly. I know Dr. Todres went through the statistics with the group and, in terms of the overall numbers, I think there was a feeling that the overall numbers for some groups are not too bad but in the management level and I think at the entry level too, if I am not mistaken, there is a challenge there to get the numbers up.

I think she outlined for you the kind of program that she has the responsibility for implementing. I think it is a substantive start on the solution to the problem.

In terms that the role of the Civil Service Commission plays in that, I do not have a strong opinion on that. You people who are looking at it more closely, along with the Human Resources Secretariat, probably can find the answer to that.

I can tell all the members of the committee that as we look ahead there is no question but that we are going to have to ensure that we do have true equity in our public service. In the groups that I deal with, there is an increasing concern about the area to make sure that we are reflecting it.

I do not know the specific answer, whether the Civil Service Commission can play a significant role in that or whether the Human Resources Secretariat can handle it themselves. I think all of us have to be dedicated to the solution of the problem but I do not have a firm opinion one way or another on that.

1030

Mr. Velshi: So what you are saying is that there should be some monitoring mechanism but you are not sure at what level it should be?

Hon. Mr. Phillips: That is right. On the one hand, the monitoring can be helpful and, on the other hand, if it lets the group that has the prime responsibility in any way off the hook then it becomes counterproductive on whether to hold the group personally accountable for it or not. I think Dr. Todres mentioned goals and targets if I am not mistaken, in her comments. I wish I could be definitive on that for you, but I do not know what is the best approach.

Mr. Velshi: OK. That is fine.

Mr. Black: Do you see your ministry playing an increasing role in the monitoring process?

Hon. Mr. Phillips: For the public service?

Mr. Black: Yes.

Hon. Mr. Phillips: I think that will continue to rest with the Human Resources Secretariat. Where we have been charged with the responsibility will be with developing the policy options for the broader public service and the private sector.

I do see, though, as I said earlier, a high level of interest in this area by the communities. I do happen to deal a fair bit with the disabled community and an awful lot with the multicultural community and in particular those who are involved in the race relations area. I think if I can anticipate for the committee, you are going to see this continue to become a higher priority issue in the community because, as I said, a day does not go by, I do not think, when I do not have one group or another expressing interest in this to me. I think the prime monitoring will rest with the Human Resources Secretariat.

Mr. Black: The role of your ministry then, if I can pursue that a little bit, would be to continue to bring to the attention of the public generally the need for that kind of monitoring.

Hon. Mr. Phillips: Yes.

Mr. Chairman: Does each ministry have a resources secretariat now?

Hon. Mr. Phillips: Someone within the ministry responsible for this area, yes. I am not sure they call it the resource secretariat.



Ms. O'Neil: Human resources branches. Every ministry has somebody who does have responsibility for employment equity within that particular ministry.

Mr. Chairman: Do you see a very strong reason to continue with the Civil Service Commission or would you see that it could be dealt with within each ministry as a closer liaison with the problems that exist and that we may see exist? Do you think there is a chance we could do away with the Civil Service Commission?

Hon. Mr. Phillips: I wish I had a strong opinion on that. I do not know the ins and outs, the workings of it, closely enough to have a strong opinion for you one way or the other. It gets back to the question Mr. Velshi raised about what is the best way to ensure that our employment equity programs work. There are two schools of thought. One is that if you hold the group which has responsibility for it accountable, you will get better results than if they can sort of pass the buck to another group. On the other hand, there are some models around that say it is useful to have a kind of another body looking at it.

I think the other point, though, is that it is very important within each ministry to have somebody charged with the responsibility of developing the programs, which we do have.

Mr. Runciman: I have a few brief questions about immigration. Something I have always been curious about and looking at in perhaps a bigger picture but just confining it to Ontario, does anyone ever try to determine—maybe it is not possible to determine—what the optimum population is for this province? I am thinking in terms of the problems we are seeing now in the Metropolitan Toronto area especially with the rapid growth, the consumption of prime farm land, the traffic problems and a multitude of other problems that are associated with this rapid growth and influx of people.

I know the Treasurer (Mr. R. F. Nixon) mentioned the significant number of people who came into Ontario last year, about 110,000 people, a lot of people moving from Alberta, etc. I guess if you are going to have that kind of internal mobility within your country there is not an awful lot you can do about it, but external immigration, if you are having people coming in from other countries, I am just wondering if there is any thought, any planning given to that aspect of it? Where are we going in terms of future growth and where should we be going?

Hon. Mr. Phillips: Yes. Let me answer it two ways. First, overwhelming evidence has been presented to the federal government from the business community in support of increased levels of immigration. Both in terms of looking ahead at our demographics and also there used to be the thought that, "Gee, if we increase levels of immigration, do they not take jobs?" I think the business community has come to a different conclusion, that they create jobs. That is talking a little bit about the first point of your question.

The second point is there is no question that the greater Metropolitan Toronto area is getting, in many respect, a disproportionate amount of the economic growth in the province and indeed in the country. What we do about that is, I think, quite important to the government overall. I am not sure it is linked to immigration as much as it is to what we are trying to do economically in the province.

It does tend to lend a lot of support to the goals of our government to try and develop economically much better outside Metropolitan Toronto. That is why we are so supportive of the moves to the north, as you know, with the ministries, which I think have been working quite well. I think that has been a very solid move, trying to be supportive of industries like Goodyear locating in Napanee and those sorts of things, to get the economic development spread on a much more equitable base across the province.

That is a better solution, in my opinion, than trying to direct immigration to certain geographic locations that may not offer the economic opportunities. It tends to come to Metropolitan Toronto because that is where the jobs are. A long-winded way to answer your question is that I believe in a continued dedication to economic development on a province-wide basis and away from seeing a concentration in Metropolitan Toronto.

Mr. Runciman: What you are really saying is there is no consideration given to the idea of an optimum population level for the province because that is extremely difficult to achieve. You are talking about concerns about demographics, the ageing population and so on. I am wondering if those kinds of problems cannot be addressed in others ways. Quebec is making an attempt to do that, in terms of increasing the baby bonus. I guess I had some concerns that we cannot solve the problems of the Third World through immigration.

You mention that increasing the population is going to create jobs, obviously you are increasing consumption by bringing people here, but you are also consuming energy and finite resources, you are consuming good farm land and you are consuming vast quantities of food as well; you are creating additional burdens in terms of pollution, housing, etc.

I just wonder if it is something that should not be given, at both the federal and provincial levels, a great deal more consideration and thought than has been given to it in the past, in terms of the implications 30, 40, 50 years down the road on a whole range of things. You cannot simply say, "This is good for the economy; we are going to create jobs," etc. There are a lot of other implications, societal and otherwise that I think we should be taking a very close look at.

I do not think anyone has ever taken up the challenge of saying: "What is the ideal situation for this province? What should we be shooting for?" I think Quebec is trying to get a handle on it, much more so than other provinces. That is my perception anyway.

A couple of quick questions about the Ontario Human Rights Commission. You were not a member of the House a couple of years ago when some members passed Bill 7, with the concerns about the reference to sexual orientation. I am just wondering what is the experience of the commission with regards to that inclusion in the act. Have you had many complaints in respect to sexual orientation?

Hon. Mr. Phillips: Can I just comment on your first comments and then on your second question if I might. You said a couple of things that we should be careful of, of solving the problems of the Third World. Not everyone appreciates the people who come to Canada from other countries. We actually are attracting some of the best, if you will, from other countries—

Mr. Runciman: We are creating more problems for the Third World then.



1040

Hon. Mr. Phillips: I would not say that. I am just saying that you have to recognize that the average education of people coming from other countries is actually higher than the average education of the people who are already here, which I do worry about periodically. Another side of the case is, are we attracting from other countries people whom the other countries have paid to educate, paid for the schooling, and then they come here? But I can argue on the other side that we pick up a lot of economic advantages.

Mr. Runciman: I just want to make it clear that I am not taking that side necessarily, but I am saying that those are concerns and issues that should be addressed. That was the point I was making.

Hon. Mr. Phillips: The federal government has spent an awful lot of time in terms of looking at the overall numbers and what does it mean for Canada down the road. If you look at the studies they have done, it is the result of a whole bunch of studies, not the least of which are some of the economic studies out of the business community saying, "We need this for our future labour force" and things like that.

To go back to your question on the Ontario Human Rights Commission and sexual orientation, there has not been a substantial number of complaints on that before the commission. I was actually surprised. I had thought that the biggest number of complaints before the human rights commission would have been race-related and actually that is not the case. They are sexual harassment oriented.

Mr. Jackson: Gender based.

Hon. Mr. Phillips: Yes, on two counts. One is discrimination on the basis of sex, and the second is sexual harassment, normally female. What I am saying is that there has not been, to my knowledge, a substantial number of complaints, one way or the other, in the area of sexual orientation.

Mr. Runciman: So there has been nothing occurring. I know one of the concerns expressed during the debate was the pressure that might grow in terms of the extension of family benefits for homosexual couples. That was one of the concerns expressed during the debate, that that sort of thing might occur and that we would find ourselves in a variety of court hassles. Nothing along those lines has surfaced?

Hon. Mr. Phillips: Not to my knowledge. Deputy?

Ms. O'Neil: I do not believe there has been a board of inquiry decision.

Mr. Runciman: And no complaints levelled, to your knowledge?

Ms. O'Neil: I am not aware that any complaints are being investigated. We can certainly check that for you.

Mr. Runciman: OK. We would appreciate that.

The other thing sort of ties in in terms of what has been happening recently, publicly, in terms of this province and the United Church of Canada and the debate that is going on within the church in respect to sexual orientation. I am just wondering how the Human Rights Code would apply in.

respect to the United Church of Canada operations within this province where there is a recommendation from the synod saying that we cannot discriminate against people because of their sexual orientation being ministers of this church.

It strikes me that the law enacted by the Liberal government a year or so ago already compels the United Church within Ontario to not discriminate in respect to sexual orientation, but if someone is openly homosexual and actively homosexual, the church does not have the right to refuse that individual entrance to the clergy in Ontario under the Human Rights Code and the amendment that you folks passed last year. Is that an accurate understanding?

Hon. Mr. Phillips: I cannot answer that definitively. I could determine that for you, but I could not give you that determination today.

Mr. Runciman: I would like to have that determination. I think it would be of interest to the current debate that is going on within the church as well. I think there is some appreciation among United Church members, if not the general public, that the law brought into effect by the Liberal-New Democratic Party accord a year and a half ago in effect compels the church to hire people along lines that perhaps the majority of the membership may not agree with. That law compels them to do so.

Mr. Black: On a point of order, Mr. Chairman: The problems of the United Church cannot be laid at the feet of the government of Ontario. Mr. Runciman must deal with the problems of his church on some other basis rather than blame us for them.

Mr. Runciman: I am not blaming you for the problems or lack of problems within the United Church. I am simply indicating that it may be relevant to the current debate within the church in respect to its operations in Ontario. I think it is something that should be brought to its attention.

Hon. Mr. Phillips: What we will do is forward you a response on that.

Mr. Chairman: OK. Maybe we could back to the more definitive purpose that you are here for, with regard to the Civil Service Commission report.

Mr. Runciman: Is that an editorial comment, Mr. Chairman?

Mr. Black: I would like to ask the minister for an opinion. I realize that it will be strictly an opinion.

Hon. Mr. Phillips: Right.

Mr. Black: If we look at the responsibility of the Human Resources Secretariat, as its duties are outlined for us—and one is the administration of government policies in terms of personnel administration—it seems to me that it is the agency that is charged with the responsibility for ensuring that there is not discrimination in hiring practices.

Hon. Mr. Phillips: Yes.

Mr. Black: The question then becomes: Do we have enough government agencies monitoring that responsibility and the secretariat's performance in that role? My feeling is that perhaps we do, if we look at the various agencies, from the Office of the Ombudsman to the Ontario Human Rights Commission, to equal opportunity through your ministry.



I guess I am looking for an opinion. In that umbrella of monitoring, are there holes that need to be addressed by another agency such as the Civil Service Commission? I have some concern that if we strengthen the role of the Civil Service Commission, which is one of the options that we could consider, we are, in effect, just creating another government agency or providing another government agency to do a job. It would be easy then for them to shift the responsibility from one to the other and we would not increase or improve the efficiency of how the job is done; we would simply, on the surface, look like we are doing a better job. Do you have an opinion on that?

Hon. Mr. Phillips: I guess my opinion would be that I suspect this issue will become sufficiently high profile, as it already is, that there will be a public scrutiny of it in one form or another. In any event, I think it is probably only a matter of time. There are, as I say, the kinds of goals and the timetables you see federally right now.

I suspect that will be the ultimate kind of scrutiny as to just how well the public service is reflecting the change in Ontario. If that comes to pass, and I suspect it will, then I would not think you would need another body monitoring it because that would be the measure of success of our programs: are we ensuring that we do have equal opportunity?

I am just saying, if that comes to pass, as I think it will, then you may not need the commission.

Mr. Velshi: Just leading from that question, in my mind, the Ombudsman and the Ontario Human Rights Commission are institutions that enter into the picture after something has gone wrong. Nine times out of 10, if I am not mistaken, people will not go there for fear of upsetting their own top senior management who have made the decision, in spite of the fact that the decision would be against them.

What I am looking for is a monitoring mechanism that will prevent such a situation from happening. Would you recommend that, even if the Civil Service Commission is not there, the human resource division of each ministry, the board or whoever makes those decisions, should be manned by people who are representative of these charter groups? What I am trying to say is there should be people who are making those decisions who are more sensitive to the issues than just a manager who is making a decision based on a traditional way of making decisions.

If that is not possible, then is there not a definite need for something like the Civil Service Commission to monitor this and make sure that this does not happen?

Hon. Mr. Phillips: As I say, I think there is a need for a monitoring exercise of some sort. I also think your point on representation is important. It is more than symbolic. I think it does ensure a kind of a sensitivity. If someone from the disabled community is participating, I think you are more likely to have that kind of sensitivity.

I do think there is a need for monitoring. I am not sure which is the best monitoring one. I think the monitoring device should, to the best of our ability, incorporate those considerations of the various five charter groups: the disabled, the native community, women, francophones and visible minorities.

Mr. Chairman: I guess when we look at immigration, we all at one time or another came to Canada, a young country. I am a firm believer that we are Canadian first and that whatever origin we happen to be, where we came from, is secondary. I am a firm believer that everybody is equal.

There has been a suggestion that perhaps we should expand the Civil Service Commission and put more ethnic and minority groups on that commission. I am wondering whether or not you consider that would be a good thing to do. I know minorities sometimes feel they are left out. However, I happen to be a believer that we are all Canadians, that we are all equal, that the person best qualified for the job should get the job, regardless of colour, race, creed or anything.

What do you think of the suggestion of expanding the Civil Service Commission and putting more minority and ethnic people on that? Is it necessary or not?

Hon. Mr. Phillips: I think the commission should, to the best of its ability, reflect the diversity in the province. Therefore, when we recognize the workforce in the province is quite heavily female oriented, it should have representation. I think somewhere around 12 or 13 per cent, in one form or another, represent the disabled community. The visible minority community is around 10 per cent.

I think the Civil Service Commission should reflect the diversity in the province. I think if your recommendation is the continuation of the commission, both symbolically, and, more importantly, just to ensure that it represents the diversity, one needs to be fairly proactive in reaching out to represent the diversity.

Obviously, they must be quality and talented people, but there is no shortage of quality and talented people among the women of this province, among the disabled of this province or among the visible minorities.

Mr. Jackson: I am glad you used the word "proactive" because when I listened to all of the elements of monitoring, I was waiting for the proactive approach. Maybe on that point I could pursue a question with you.

I guess everyone will agree that as the complexion of our province changes, in fact, so should the civil service and the broader public sector. I have always experienced that where there is an intervention, if I can refer to it as an intervention, in terms of quotas or in terms of assisting access, there is the resultant equal and opposite loss in some respects. It is like squeezing a balloon: when you put pressure on the system to make room, it has to bulge somewhere else. In this instance, I have been concerned about a growing number of employees in this province who seem to be getting caught in the crossfire.

I want to be clear that I am not passing judgement on the appropriateness of the new entrants. I am concerned about the repercussions. Particularly, I want to discuss the problem for older, unilingual women in the civil service. I have had several cases brought to my attention, primarily because of their age and some on the basis of resistance to learning new technical skills and training. I do not even wish to speculate that it has to do with job category and pay, because that is a private sector matter, primarily in the retail experience, that we have noticed.

If I can stay on this one point, I want to ask you about the Moher



report, which suggests that there are some deficiencies in terms of the labour relations skills and understanding of the elements of the commission. When you say proactive, the solution to many of these problems lies at the level where there is collective bargaining going on and some of the programs for new entrants and how they are absorbed into the system and to make sure that people do not get caught in terms of being shunted out the door.

Tell us please, what it is you are doing or what you plan to do or what you would like to do in order to ensure that your ministry, which supervises or is reported to, is able to have more of a hands-on approach to protecting some of these workers who maybe forced out the door? I hate to use the words "forced out the door." I am trying not to imply that that is what is going on. It is the resultant effect of some other action. It is a pressure within the system to bring new entrants in and I am seeing these older, unilingual women getting caught, primarily. I see some instances of males, but that is not as significant, in my view, as the older single women. A lot of them are single. Would you comment about that? Do you understand my question?

Hon. Mr. Phillips: I think so, yes. I think, frankly, I have had a substantial amount of experience with the programs that have taken place, especially in the last 10 years, with women. I think there is a model there in the sense that you say, "We want to make sure that our workforce reflects the diversity in the province, and let's begin that process." I think that has been accomplished. That battle is not over, but there has been a substantial amount of progress made, I believe, not just in the public sector but right across the province, in the private sector, in the professions and in the colleges and universities, insuring that women play increasingly their fair role in it.

I do not think that has been done in a way that has been unfair to males. It has been done in a way that I think ensures that the—

Mr. Jackson: I am sorry; maybe I am not expressing myself clearly. My concern is not with the establishment of targets because I think there is general acceptance by all three political parties on the identified targets because they are, in effect, an extension of the reality of the community we serve.

I am not questioning your achievements. That is not what I am asking you to focus on. As anyone who has done any work in personnel, you want to look at the aftermath and the repercussions; you do not want to look at targets because everybody works towards targets and hides behind targets or promotes targets.

What I am talking about is who gets caught in the aftermath. I did not want to mislead you by suggesting that males are getting a disproportionately less share. OK? That is not such a bad thing, but there is an interweaving of these, there is a hierarchy of these targets where you get four points because you are a woman but because you speak only English, you only get one point, so you are out the door.

To put it in clear and fast terms, that is what I am talking about. We are seeing people with extensive public service getting caught and being dealt with in a very intensive labour environment. It has very little to do with human rights. I am working with a couple of cases and it would be unfair for me to get into specifics. That is not the purpose, but they are being mired in labour process and they will eventually go to the Ontario Labour Relations Board or they will go to the Ombudsman or, as Mr. Velshi said, they will go to these higher courts of last resort.

When I see in the Moher report, how clearly it identified a lack of sensitivity or a lack of support services within the monitoring of the Civil Service Commission, then I ask the question, maybe we could be resolving many of these issues before they get out of hand, before they lead to a lot of acrimony. Then you get a system similar to the Workers' Compensation Board where you are mired in process with these people unnecessarily and, to me, it is just bad management and it is not fair to people who are in the system, who are contributing, and who because of other targets are being pushed out the door. I am sorry I have to use that phrase; I have not come up with a better way of describing it. But it is by default they end up in this position.

1100

Hon. Mr. Phillips: I hope that is what the Human Resources Secretariat is doing already. I think that was one of the reasons its mandate was expanded.

Mr. Jackson: I see it as target oriented. Everything is target oriented. I do not see people monitoring the repercussions. That is all I am trying to focus in on.

Hon. Mr. Phillips: On the other hand, I see an awful lot of the Human Resources Secretariat's work involved in people development, just people development in total. The big part of the deputy's job from her contract, her job performance, is the development of people. We have virtually nothing else in this business but people. I think the increased role of the Human Resources Secretariat may even have come out of that report. I think when Deputy Minister Todres was here she probably talked a lot about the management development and the people development programs that are within the civil service now, the kind of personnel policies of looking at every individual, obviously as an individual.

This does not speak to your specific point, but for some people who may have wanted to retire earlier, I think there was a voluntary exit program offered over the last couple of years. I am not sure that would have addressed the cases that you talked about. It was designed more for the recognition that we would like to find ways that we could encourage younger people into the civil service and that there were certain people who felt they would like to retire earlier. There was that option offered them.

So I hope we are already doing a lot of the things you would like us to do in terms of personnel policies and programs to look after people, because the job requirements may be changed, and either train them or help them pick up those skills.

Mr. Jackson: If I could just close with this one concept, I will share with you my concern and then, hopefully, you will embrace that and at some point consider it. The multicultural and the identified gender-based affirmative action programs are all very supportable and they are easy to monitor in a sense, but the objectives of a bilingual civil service are fraught with difficulties and this is where this surfaces as a problem.

We have a entire generation of Ontario students who are better educated and have more access to French-language services, and 10 years or 15 years from now the ability for a civil servant in this province to become and to convert to being fully bilingual will be enhanced immeasurably. But today a 40- to 50- to 55-year-old employee does not have the same aptitude and inclination and abilities to do that. I sense there is tremendous pressure to



reach political targets, but there is a whole group of citizens getting caught in the wash here, primarily older women who are saying: "I've got eight years left. Why am I being required to do this?"

Those targets I think are quite unfair and inappropriate and I think we have got to be more patient. I am not against the target; I am against the fact that many people feel they are being pressured. I get a lot of feedback about pressure. I raised a question about it in the House just the other day.

Anyway, I will just share that with you because I see some tragic consequences and pressures there that are somewhat inappropriate. There are many elements of your work that are highly commendable, but in this I think somebody should be monitoring where people are getting caught and ensuring that at the level where they are negotiating agreements within the management structure they are working. That is where the intervention should occur and to make sure the sensitivity is there and not forcing people to go all the way through the routes. I am spending a lot of my time working within ministries trying to encourage the inner management structure to help the individual, as opposed to saying, "Let's jump-break to the Ombudsman," which really just creates a lot of paper and aggravation.

Mr. Chairman: If you want to reply to that you may. We are just about out of time. We want to get moving on.

Hon. Mr. Phillips: I will reply very briefly. The area that I have responsibility for is a wonderful opportunity for Ontario. I could not be more enthused about the opportunity that is offered by the diversity we have got in the province. I have had a chance now to work very closely with it for eight months and I just share that vision with all of you.

I take both of your points that one of the things I have to ensure we do is that we keep everybody on side, if you will. Regarding Mr. Runciman's comments on immigration, I think one of my roles is to ensure that I communicate the benefits of what we are doing so everyone understands that. It is the same with Mr. Jackson's points about ensuring that in the interest of treating people fairly we do not end up treating other people unfairly. I understand both those comments and it is a challenge for us.

Mr. Chairman: Thank you very much for appearing before us this morning, you and your deputy. We appreciate it. You can go back to cabinet now.

Hon. Mr. Phillips: Thank you.

Mr. Chairman: At this time, we have another draft report we want to discuss.

The committee continued in camera at 11:08 a.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:  
ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL SAFETY

MONDAY, AUGUST 22, 1988



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Biggar, Virginia, Executive Co-ordinator

Chan, Dr. Penny, Research Officer



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday, August 22, 1988

The committee met at 2:05 p.m. in room 151.

AGENCY REVIEW  
(continued)

Mr. Chairman: I call the meeting to order. We have the Advisory Council on Occupational Health and Occupational Safety: Dr. Dennis McCalla, chairman; Virginia Biggar, executive co-ordinator, and Dr. Penny Chan, the research officer. If you would like to come up and sit in those chairs, I presume you have an opening statement that you would like to make. You may proceed at this time.

ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL SAFETY

Dr. McCalla: First of all, you have received an excellent report on the council prepared by Lorraine Luski, which summarizes very adequately and succinctly what we are and how we operate. I congratulate you on the job you have done in putting that together.

I would like to spend a few minutes telling you somewhat more specifically about what we do. As you know, the council came into operation just the year before the Occupational Health and Safety Act of 1978 and was incorporated as part of the act.

In the early days, as the infrastructure and many of the policies and procedures for occupational health and the operation of the occupational health branch of the Ministry of Labour were being put into operation, the council played a major role in advising on policy. For example, the council advised on policies and procedures in establishing standards; policies and procedures for manpower training and funding for manpower training; policies and principles for recognition of new chemical hazards; health and safety programs for small establishments; advised on hearing loss; language and the Occupational Health and Safety Act, and policies and procedures for research and development.

As you can see from that list of topics, and I am sure from what you already know about the field, occupational health and safety is an area that is very diverse. We are concerned with matters of policy and with matters of a well-established technical nature, much of the accident prevention and some of occupational health. The principles are well understood, and the challenge is one of applying this knowledge in the workplace, motivating people and, more important, keeping them motivated, influencing human behaviour. This area is still very much with us. You have only to read the statistics on accidents and loss of life in the workplace in Ontario to know that what should be the straightforward area of safety is still a very vexatious one.

The area also involves the evaluation of new knowledge on human health and the effect of chemicals and other agents on the health. This often involves the leading edge of scientific research areas where the experts themselves may not agree; yet the Ministry of Labour is required, or deems it necessary, to set standards for toxic chemicals and so on in the workplace. The matter of judgement that is required for this is a very tricky area.

The problem is that reasonable people can conclude a range of levels that would be perfectly acceptable, and obviously there is generally pressure from the labour side to have these levels set as low as possible. That is a perfectly legitimate response on the part of labour, but this often involves costs, so there are economic considerations that sometimes, to some extent, pit labour against management. I think the council has been a useful forum to talk through and come to a consensus on some of these issues. I will have more to say about that later.

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Your background paper notes that members of council are drawn from the area of organized labour. They are generally senior officers of labour unions, large labour unions, consortia of labour unions or their staff concerned with occupational health and safety. For the management side, we have senior corporate executives on the one hand and corporate medical people on the other.

Our public representation currently consists of a physician, a toxicologist, a political scientist, an economist and a lawyer. We have had, in the immediate past, a homemaker from northern Ontario who was one of the most effective members of our council. The council represents a truly wide spectrum of expertise. Our members include those who are in contact in a very real day-to-day way with the concerns of labour on the one hand and with the concerns of management on the other.

Council is independent of the ministry, as noted in your background papers. Council's role is to advise the minister. It does this formally, with advisory memoranda which get formal responses from the minister. We communicate informally with the minister as well, through meetings between myself and the minister, and then we communicate, again on an informal basis, with ministry staff on an as-needed basis.

We also send our minutes to the minister, the deputy minister and the assistant deputy minister for occupational health and safety. There is a great deal in our minutes in the way of commentary, points of view and concerns which is really never developed by the council to the point of formal advisory memoranda, but which nevertheless is transmitted to the minister and his senior staff in that way.

As I have said, the council, in its early days and in the formative years of the Occupational Health and Safety Act, advised the minister on a great many aspects of the policies that were being set in place. Like all advisory councils, our advice was sometimes taken and sometimes not, but I think on the whole we are quite gratified at the influence we had in setting up the system.

Then, in about 1981, the ministry embarked upon and concluded a number of reviews of designated substances. These were chemical agents chosen because they were deemed to be the ones of greatest concern in the workplace in Ontario, usually a combination of highly toxic chemicals to which large numbers of workers were exposed: things like urethane derivatives, coal tar emissions from coke ovens, lead and mercury. The list goes on and on. There are now about 12 or 13 designated substances.

The council assumed on request the role of looking at the designated substance regulations as the very last step prior to their promulgation and played, in a way, a kind of audit role. I will come back to the designated substances and the way that has evolved.



More recently, we have made recommendations regarding the health effects and the steps that should be taken regarding video display units.

In 1982, we prepared a major discussion paper on workplace carcinogens, invited briefs and held a two-day public hearing in which labour groups, management groups and management associations debated very vigorously some of our suggestions and recommendations. This led, a year later, to an advisory memorandum on the identification and control of new carcinogens in the workplace.

We have produced advisory memoranda on occupational hazards in the workplace, on literacy and occupational health and safety and on health surveillance in the workplace, health surveillance being steps taken by the employer or the corporate medical staff to monitor the health of workers, the idea being that if we can detect changes early, we can perhaps protect workers from continued exposure and treat them appropriately.

You will recognize that there are a limited number of situations in which you can really perform meaningful health surveillance. We have given quite a bit of advice on that. In fact, the existing designated substances regulations are currently being looked at in terms of the health surveillance in the light of our latest advice on that.

We have also produced for the minister, and hopefully for the use of his staff, a number of papers on various things, such as policies and procedures for the interpretation of epidemiological studies. This was done out of recognition of the fact that some of the health effects documents that were being produced for the ministry or by the ministry were inadequate in their interpretation of the existing epidemiological data. The ministry, we are glad to see, has used these in subsequent studies, I think to good advantage.

The subject of biotechnology is a very broad one. It has just been, as many of you will know, the subject of a Couchiching conference. There have been reports in the papers here in Toronto in the last couple of weeks on this. Biotechnology, in a sense, is very old in that mankind has been enjoying beer and wine for millennia, but some new techniques have become available that involve the transfer of genetic material between species. The technology is very powerful. It will open the way to making new products. If Canada and Ontario are to remain commercially viable and profitable, it is inevitable that we will be into this in a major way in coming decades.

Most people believe that the risks involved are relatively low, but I think no thinking person regards them as completely negligible. The council, at the request of the ministry and minister a number of years ago, took on the task of looking at the biotechnology industry, making some recommendations regarding how it should be regulated.

To this end, we held an invitational workshop, inviting people from the academic community, labour and management, and consortia of biotechnology companies. We had a vigorous one-day workshop. The papers from that workshop were published and we have since submitted to the minister an advisory memorandum recommending how the ministry should proceed in this new area.

Basically, it seems to us that here we have the opportunity to work with a developing industry as it begins, to look at the risks, to look at the exposures of workers and perhaps in this industry to prevent the kind of after-the-effect responses which have been typical in the mining industry and various other industries where, really, we have used humans as experimental

animals. They have become ill through their workplace exposure and then we have tried to deal with them, which is often very difficult, and dealt with the problem, which of course helps future workers but not the ones who were responsible for detecting the problem.

A major undertaking of the council three years ago, and going well beyond that in its planning stages, was a survey of joint health and safety committees. I am sure you are all aware that the act of 1978 requires all workplaces larger than 20 workers to have a joint health and safety committee membership from management and labour to advise on health and safety in that workplace. This survey involved the careful sample of almost 3,000 workplaces in Ontario. We sent questionnaires separately to management and to labour and we got a very high response rate, published the consultant's report on the survey as a supplement to our, I guess, eighth annual report. Again, since then, council itself has put in an advisory memorandum to the minister on joint health and safety committees recommending some changes.

We became concerned roughly two years ago at what many of our members perceived as a lack of true opportunities for debate and consultation in the community on occupational health and safety, and a little over a year ago submitted an advisory memorandum to the minister on consultation.

That gives you some idea of the scope of our activities. You can see they are a mixture of process, technical and health related.

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Let me return to the review of designated substances. Council's role here was intended to be kind of an auditing role. We were to look at the process the ministry used to develop the regulation, the adequacy of the public consultation and so on and their use of the available health effects and other data.

The ministry was clearly responsible for the level set, the acceptable level for the substance, and for other features of the regulation, but the public at large, and much of labour and management, in fact, have construed the advisory council as being the body that finally approved the designated substances regulation. That is really not the role that we played.

Almost simultaneously, we found ourselves becoming repetitive in some of the comments that we were making about designated substances regulations, although many of our comments led to useful changes either in regulations before they were promulgated or to subsequent regulations in terms of changes in process and so on.

Perhaps one of the most important things that we were instrumental in encouraging was the use of peer review for the health effects documents provided by the ministry staff and by consultants for the ministry. In the end, there was an agreement among a reasonable sample of the health or scientific community that the document was reasonable. It was not just the views and opinions of one or two people working in the ministry or as consultants to them.

At the same time, there arose a general disenchantment with the pace of designation because, as I have said, there are only 12 or 13 substances currently designated. There are hundreds of toxic compounds used in the workplace.

So the ministry responded to considerable pressure from a variety of



sources by introducing a bill roughly two years ago to regulate exposure to over 600 chemicals. That left the process of designation a little bit up in the air since a large number were regulated without the careful but very time-consuming scrutiny that designation involved.

At the same time again or just a little bit later, in response to pleas of labour and management that those two groups could, with limited help from the ministry, agree on rules and regulations for dealing with hazardous substances in the workplace, a joint steering committee on hazardous substances in the workplace was set up. It is chaired by the assistant deputy minister for occupational health and safety. It is only a few months old, but it is a very interesting and potentially a very important step in terms of evolution in dealing with toxic chemicals and other harmful substances.

For all these reasons, council has temporarily at least withdrawn from the process of looking in an audit sort of role at the designated substances regulations. Indeed, it is unclear to us how many more designated substances regulations there will be with all these other changes that have gone on.

We have just finished within the last two months a process of deliberation and submitted to the minister an advisory memorandum recommending some changes that we believe should be incorporated into any revision to the act. Largely, this builds on our previous advice and experience.

Our two major current thrusts have to do, first of all, with education. This, in a way, is revisiting a very early advisory memorandum that council prepared, but we have been struck by the need for education of the workplace parties, particularly of workers and their first level supervisors. The evidence from our survey of health and safety committees made it clear that additional education would help. Our members, both management and labour, feel strongly that that is true.

We also note that the education authority of the Workers' Compensation Board is in a state of flux. We believe this is an area where a good deal of attention and careful thought is required. It is not at all clear to us what the intentions of the education authority are. We hope that will become clear within the next few months because we certainly have no desire to duplicate things that they are doing, but we doubt they will be covering the entire waterfront.

I might just note parenthetically that our members feel very strongly that the public concern with occupational health and safety is very much lower than it should be. It has been noted, for example, that within the past 20 or 25 years, environmental consciousness has developed, so that when you go to cocktail parties, people do talk about the environment and the problems with the environment. You do not hear the same level of concern for occupational health and safety, yet it is probably of equal importance in terms of the health and wellbeing of our population.

The second area is one we may regret taking on, because this is occupational health and safety for small businesses, again revisiting something that earlier council tackled. There are a great many small businesses across the province, as you know. They are responsible for a great deal of our economic growth. They have tremendous numbers of pressures—the tax man, the bank manager and so on—and by and large their knowledge of and concern for occupational health and safety is relatively low. I do not mean that as a putdown of small businessmen or as a statement that I think it is their intention to neglect this area, but their concerns are small. They have

relatively few workers. The number of accidents any one of them has in a year is relatively small, probably zero; probably zero for years and years. But collectively, they represent a problem. There are questions of how to reach that group, how to motivate that group, what kind of incentives can be provided and so on.

Again, it is an area that is being worked at in a number of jurisdictions by a number of bodies. It is a very difficult area, but it is one that really involves an awful lot, a very high proportion of the workforce of Ontario.

Let me conclude by saying that I hope this has shown you that the council has been active in a variety of areas. Whether we have been successful is really not for me to judge, but certainly we have been responsible for ensuring that the minister has got some information and points of view which I personally do not believe he would have got in other ways; certainly, that he would not have got from his own staff. I think this is obviously the purpose for which council was created.

I have said a little bit about the way our role potentially overlaps with the joint steering committee for toxic substances, with the education authority and so on. We have on several occasions had members of those groups to our meetings or otherwise been in contact with them, so we try to keep duplication of effort to a minimum.

Council has worked largely by consensus. It is a forum in which all of the members share occupational health and safety objectives. I believe I can say that all members have worked very hard to achieve consensus. There have been times when we have not been able to reach consensus on particular issues. This has not happened very often, but it has happened, and there our advisory memoranda to the minister have simply acknowledged both points of view and noted that we are unable to reconcile them.

I am proud of our accomplishments as a council and I am very grateful for having had the opportunity to chair it.

Mr. Chairman: We have members who would like to ask some questions, but I would like to start off with a couple.

At present there is no memorandum of understanding between the Ministry of Labour and the advisory council, though there is one being developed at this time. Do you concur with that? Do you think it should stay the way it is?

Dr. McCalla: My point of view is that if the minister felt a need for a memorandum of understanding, I would be perfectly happy to work with him and try to develop it. I have not felt that one is needed. I think that with the common law traditions, if you like, that have developed over the decade and the guidance that the procedures manual gives, it works quite smoothly. But I have no opposition to the notion.

Mr. Chairman: To do your job, you indicate that you have to supplement your staff with a lot of specialists. Could you give us just an indication of how many specialists would have been hired over the past year and what their role would have been?

Dr. McCalla: By and large, the people we had were as members of our task forces. They are really not staff in the true sense of bringing in somebody to do a staff project. They take part in the meetings, developing background papers on various topics for council.



One example that comes to mind is biotechnology. It happens that both Dr. Chan and I have interests in biotechnology. It is not an area where there is a great deal of either labour or management experience on council. In order to provide that, we involved a laboratory worker from Connaught Laboratories and added a senior staff scientist from Allelix Inc. They are paid, I believe, a per diem rate. We seek, and I think we have always received, ministerial approval for these people. They are really there not so much as staff, but as expert committee members.

Mr. Chairman: Are they paid out of your budget?

Dr. McCalla: I believe so.

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Mr. Chairman: I have one final question. Would you indicate any changes to the act that you would like to see as far as small businesses and health and safety are concerned? Do you feel there is not an overlapping here with regard to the occupational health and safety committees in the province and in the workplace? I would like you to clarify why you would want to get into that area.

Dr. McCalla: I am sorry.

Mr. Chairman: With regard to occupational health and safety, you are saying that small business and safety is what you want to get into now.

Dr. McCalla: Yes.

Mr. Chairman: Those were the two key areas, education and small business health and safety. I would like you to elaborate on the health and safety aspect.

Dr. McCalla: I am sorry. I have failed to make myself clear. It is health and safety as it relates to small business.

Mr. Chairman: Is that not covered now under the Occupational Health and Safety Act?

Dr. McCalla: It is covered and it is not covered. Workplaces of fewer than 20 workers which are not involved in designated substances are exempt from several important provisions of the act, like the requirement of a joint health and safety committee.

The other thing that is very clear as you talk to people in the area of smaller firms, whether it is construction or small manufacturing concerns, is that the level of awareness generally of the health and safety requirements of the act as they pertain to substances or equipment or whatever is being used is quite variable but often very rudimentary.

Mr. Chairman: I do not think you clarified my point. I will tell you why. I know of a situation where there is a small industry with very few employees. A person complained about the substance—~~asbestos~~—he was working with. I advised him to call the occupational health and safety division. He did, an inspector was there within hours or days and it was looked after. That is the reason for my question, why are you now wanting to get into that area when I thought it was already covered?

Dr. McCalla: It is covered in the sense that if a worker or manager

knows the hazard and knows how to use the help available through the ministry, action can be obtained. It is my belief that there are a great many places where workers are handling dangerous materials without realizing the hazards. The workplace hazardous materials information system will help this somewhat, but the sort of educational program that is really required to make that effective is going to be rather difficult to mount in small workplaces.

Mr. Breaugh: A great many of us have looked at this whole area of problems for a long period of time. I have a multitude of things I would like to talk to you about. I will not try to do them all this afternoon. If it is agreeable, I would like to give everybody a chance to do two or three little pieces on what you want to do. We have another day tomorrow, and maybe we would like to get back to some major areas; for example, the hazardous materials information system, a fairly broad piece of business. I think we would like to spend some time on that tomorrow.

Let me get at the nub of what is irritating me these days, many things. I guess, like many people who represent industrial ridings, one of my first experiences as an elected person was to get invited to sit at the kitchen table of the widow. The widow says to you, "I don't understand this language and I don't understand what happened to my husband." You turn around and ask the government agencies, and they do not understand either. The person who ran the company says, "Well, I don't understand it either." But the fact remains, the person died; the widow was there. I recall the first one that I did. The widow was about 45 years old, her husband had worked at Johns-Manville in Scarborough. She did not know what had happened to her husband; neither did I, the government of Ontario or the company. It was a pretty sad situation.

I guess in many ways, since I have been a member here, we have made some advances. We have begun to structure advisory councils and regulatory agencies, to set up in law some health and safety committees and to do some research. We have made some strides.

I am grateful that you have been in business as an advisory council for some time; so take that as a given. But is it time now to kind of look at all of the advisory groups and regulatory groups that we have in place and sort them out? Is it time to say that some should cease and some should continue?

Let me just continue this question a bit further. You may gather that I have a bit of a labour bias, being a New Democrat. I work with a lot of people who are very interested in this field, and it is difficult. It is difficult for somebody who is an auto worker, for example, to master the language. We now ask someone who has made trucks for 20 years to master what the best intellectual minds in medicine have been unable to do. It is not a simple task.

At the federation they are struggling to be able to be participants in this process now, and I think making headway, but having some difficulty because every time they turn around, a new regulatory group or advisory group springs up. There are only so many people whom they can devote to this task. The problem they have put to me is one I would like to put to you now.

Given the resources that are possible at this point in time, is it advisable that we take a look at an advisory council like yours, which may well continue to have a useful function in advising the ministry, and either eliminate it or change its nature somewhat? I have to say that a major problem is beginning to emerge. We seem to have developed the resources to study these problems, but we seem to be falling short in terms of how to resolve them. One



of the most common problems is put to me very bluntly by people who have an interest in the field:

"How do I continue to serve on an advisory council like this, which is very time consuming, very complicated, and at the end of the process the best I get to do is advise the minister? Wouldn't I be better off to stick in my own little bailiwick, work with people in my own local, go head to head with my own management people"—both sides have a vested interest in whatever the workplace situation would be—"stay there, and let the minister get whoever he or she wants to advise them on whatever matters are before them? Shouldn't we withdraw from that kind of advisory stuff?"

It may well be a product we have advanced a bit. Where at one time we had this broad advisory council, and that was the only resource we had to turn to, we now have several other agencies and mechanisms that are investigating similar areas. I think that the resources on both sides of the table, on both labour and management sides, are getting somewhat strained here.

The question is, as bluntly as I can put it, should we do away with this advisory council and regroup or change the nature of the advisory council? I would like to hear your comments on that.

Dr. McCalla: I would be glad to comment. I am not sure I am going to answer the last question, which you offered very clearly.

Let me make two general comments. First of all, I am tremendously impressed with the way some of your people who have been building cars most of their lives have mastered the language and have become able, not to do what the scientists do, but to keep the scientists and the medical people honest, to ask them appropriate questions. They are very impressive people. Second, they have made us very aware of the limitations they feel in terms of both their own time and particular staff time, the Ontario Federation of Labour particularly.

I guess my answer to your question would depend on what is going to be put in place of the advisory council. It seems to me that there is a place for a group that is not charged with operating anything, that is composed of the workplace parties on the one hand and technical people—because that is largely what our public members have been—on the other, to sit down and debate in a fairly relaxed forum, as compared to labour negotiations, some of the important issues of the time. The frustrations that you have passed on from some of the people who you have talked to are the questions that all of us feel in the advisory council. There are days when I go back to the work that I would have done if I had not gone to the council meeting and ask myself: "Why on earth did I spend that Tuesday chairing the council meeting? It doesn't look as if we accomplished very much."

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I guess my somewhat vague answer to your specific question would be that it seems to me that you need a body, maybe not like the council, but a body that plays the role that the council does, in a sense standing above the fray and advising the minister. You ask how big it should be, what its composition should be and what resources should be devoted to it. I do not know. I think in some of the areas resources could very well be deployed or could be redeployed.

I suppose you can visualize a setup where the workplace parties of

management and labour work closely together, as is being attempted with the joint steering committee. The ministry serves as a referee and injects government's concerns and perceptions. Maybe that in fact is enough to do it, drawing on outside experts where they are needed.

I guess my nonanswer is that I am concerned, as you are, about resources. I think I would say categorically at this point that I would not want to see council disbanded, but I would be quite prepared to consider or be part of a process of considering how resources might be better used and how council might in the end disappear.

Mr. Breaugh: Let me pursue it just a bit then. I guess to be as pragmatic as I can be, people on the labour side of the issue, if I can put it that way, at the Ontario Federation of Labour and elsewhere, have developed what I think is a fairly substantial pool of expertise. It may be among a limited group of people but the knowledge, I think, is pretty good. They may not have the degrees behind their names, but they certainly have put in the hours and they have, I think, done the studying.

The demands now come at them from many different places. They feel, and I think quite rightly, that their first priority ought to be to service people who are out there in locals, working in plants on their own with very little in the way of contact, with the hope of new information sources becoming available through the hazardous waste information system. But then one needs a little help.

They kind of feel pulled, I think is the way to put it politely, between a natural inclination to participate at the centre, where they can seek the ear of the minister in an indirect way through the advisory council and have an impact there, and following their natural instincts, which are basically to go out into the workplace and to organize there.

In many of those workplaces the stories still come in that it is not as easy as it ought to be to get a health and safety committee put together and functioning. It is not hard to get one put together, but it is still difficult to get one working out there. To have people attend a meeting is one thing, but to have them function in the workplace is quite another matter.

There is an ongoing need for education, for servicing, for training, for leadership, for exposing people to new information systems and for explaining the law to them, which is really quite a hoot. I am someone who participated in the drafting of the law. People come into my office and say, "What do I do when I think there is an unsafe place where I work?" I have a little trouble explaining to them, "Well, yes you do have a right to refuse, but what happens after that?" Who has the obligation to make it safe? That is an interesting question. What do you do when nobody from the ministry shows up? That is pretty interesting.

Mr. McLean pointed to one example from a small business. I get a number of others from small businesses where there is quite a different perspective put forward. In my region, for example, every once in a while a big company such as General Motors does something silly, such as dumping some chemicals it should not. But they do not do that very often. When they do there are just too many people around. They tend to get caught these days.

But in smaller businesses a lot of them just kind of flush it. Then we have to try to find out who did it this time. Then you have to trace them back. A year or so later you may get them in front of a court or you may get



some kind of prosecution under way, but it is quite a challenge to find out who flushed something down a sewer in Ajax six months after the fact, and to try to prove it and figure out whether it did any environmental damage and whether it did any damage inside the plant to the people who initially worked at that; it becomes quite a challenge after a while.

What I am trying to get at is this: if you were to sit down and design a system now, what changes would you make to the advisory council that would perhaps allow it—I have no argument with the fact that the minister needs at his or her disposal an advisory group something like this. My problem is that it is straining the resources that are available in the workplace, both on the management side and, I think, on the labour side. We are encountering some difficulties there with both groups in different ways: "We are having some trouble functioning as part of this advisory council any more. There are other pressures that are pulling us to other jobs in other places."

How would you restructure an advisory council at that point?

Dr. McCalla: Again, I am not sure I have a set of—

Mr. Breaugh: Perhaps the minister will turn to you tomorrow morning. He is quite likely to do this. He will call you into the Park Plaza for breakfast like Bill used to do and say: "We cannot handle this advisory council in its present form, but we want to keep an advisory council. What should it look like, who should be on it and what should it do?"

Dr. McCalla: I think I would like to make one comment on your previous comments and then I will come back to that. It seems to me that we all, certainly labour and management, have vested interests in working both at the periphery of it and at the centre.

Let me put it to you that if the advisory council's report on occupational health and safety committees and some of the problems in their functioning were part of the stimulus for the ministry to develop its advisory service on occupational health and safety committees, maybe that in the end saves the labour people a lot more time than they put into developing that. I do not know how you feel about that, but many of our members feel very positively about the advisory service, so I think we need people working both on the periphery and at the centre.

It seems to me that you could restructure the advisory council or change its mandate in a number of ways. If you wanted to, you could make it smaller and that would save people's time, but again, what you gain in hours saved you lose in representativeness, so that is a tradeoff.

You could change its mandate so that rather than being the formal kind of body it is, preparing advisory memoranda, which are laborious to do—these ladies write them, at least they do the drafting of them, and then they get torn apart line by line and come from the very large investment of time in that—it could be a much less formal group saying: "Minister, from where we sit today, your problems are the following. Here is how we think you should solve them," and the meeting breaks up after breakfast without any—

Mr. Breaugh: What would be lost with that?

Dr. McCalla: Again, this is arguable. I think at least initially, and I believe still today, there are some real advantages in having the

advisory council memoranda public and the minister's response to them public. Again, that is a tradeoff: Do you want that, and is the investment worth while?

I guess my bottom line advice, having had all of 10 minutes or so to think about your question, would be: "Look, Minister, you have a council that has done some useful things. It seems to be working well. Think about it as you put these other things in place. And yes, by all means at some point structure a review and see how you can best direct things."

As you probably know, our advisory memorandum on consultation really pleaded for a very thorough, systematic look at the whole of the occupational health and safety system in Ontario, partly with a view to improving performance, but partly also with a view to using resources as well as possible.

Mr. Breaugh: I will conclude on this and chase the other things at another time. I would say that the annual reports from this advisory council have been extremely useful to a number of people, if only for the simple purpose of focusing everyone's attention in one place on some of the problems that are before the ministry and having an advisory council that is seen to be nonpartisan, and not quite academic; I do not mean to use that term.

Dr. McCalla: Our labour and management members would not want to hear that word used.

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Mr. Breaugh: I think that has served a useful purpose. I guess the end of the argument for me is that people are winning my ear by saying, "We used to go there and think that if we won the battle at the advisory council, we won the battle," but that is not true. It never has been true. This was a council to advise the minister. The minister set the regulations.

If we devote our resources to going into an advisory group and we lose the battle there, the best that will happen is that we will lose it a second time. We will lose the same battle on a different battleground. It is a kind of no-win situation. Would we not be better to develop our resources in the field, develop our own expertise and have some participation in advisory groups such as this, but limit that so we deal with it, I guess it is safe to say the current trend would be in some kind of bipartisan approach to it that looks at a very specific, almost industry-by-industry type of problem. You look at the management side, you look at the labour side and then you arbitrate the dispute in some manner.

We are still having difficulty. To be fair about it, a lot of money, time and effort have been put on this broad set of problems by an immense number of people. We still have people dying in the workplace. That tragedy still exists today. It still is true that in some of the workplaces where a health and safety committee is not mandatory, a death will make it mandatory. The high profile of a human being dying changes the nature of it. I am not sure that is the criterion I want used for the establishment of mandatory committees. We have begun—I would like to take some time tomorrow perhaps to go into the information side of it—to look at what kind of pooling of information and access to that information we can develop, and then how we will use that and how we will resolve the arguments.

One of my favourite human beings in the world is an old guy named Eddy Cauchi, who happens to live in Oshawa. He worked at Johns-Manville. Some of



you may know him. He has developed an expertise of his own. He has taken on those people as a cause and what has happened to their lives. He carries around with him great medical opinions defining what happened to those people.

The problem is that other experts equally skilled and knowledgeable in the field do not agree with those assessments, so from Eddy's point of view, the system has failed pretty badly because it has not given justice to the people who worked with him or to him. We have come some measure in developing a rational approach on the part of the government to this, but we have not resolved the problems by a long shot.

I do not want to take up all the time this afternoon, but many of us feel very strongly that this is an area where we know, not everything, but a fair amount now, where we have developed some mechanisms, some laws, to resolve some of these problems, and they are still working rather imperfectly. We can brag about the advances we have made. Every time I have a tendency to do that, some tragedy occurs somewhere. Sometimes it is a high-profile tragedy like an industrial death on a construction site, but more often than not, it is just that someone dies who worked in a plant for a long period of time. The newspapers do not carry that story and no one has much interest in it until someone else in the family asks: "Why did my father or my mother die in the workplace? What caused that and what redress do I have?" We are still struggling very badly with that.

We have come some measure in this field, or I hope we have. As one who has spent a lot of time preaching the cause and listening to people's problems and trying to find solutions, I hope not all of that has been to no good purpose. People like Elie Martel walked around here with wheelbarrows full of information for years and tried to digest that, and ranted and raved at various people. I hope that was not all in vain. I do not think it was.

But we have not resolved some pretty basic questions yet. As we go through the review of this agency, I am interested in pursuing whether the role of the agency itself should naturally change now, should move to a slightly different focus, and that other agencies and other regulatory bodies should perhaps move in because it may well be that the problem we are struggling with here is that we have not quite defined what each one of us should do, and that although we have a very nice law, we have not quite worked out how that law works in practice.

It still is true that at one of our major aircraft manufacturers, for example, when we wanted to find a labour and a management representative both of whom had developed expertise and certainly had an ability to represent themselves and communicate the needs from either side of the table, the truth is that when they got into a dispute, they did not really know how to resolve that. That is where I would like to proceed from here. I would be interested in your response to that.

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Dr. McCalla: I will just make one brief response to that. In some respects, that evolution has already taken place. I spoke at some length about the designated substances regulation and the role we played. Just off the top of my head, I would say that involved half to two thirds of both council and staff time through the years 1981 to 1987.

As we opt out of that role, the burden of the sort of final checking and so on will fall on the ministry or on the joint steering committee. That will

free up council resources to do other things or to lighten the load on members or some combination of that.

Mr. Chairman: We have five other members who want to get on the agenda here.

Mr. Dietsch: Just to follow along with the preamble Mr. Breugh has set, I am curious in terms of how the council interfaces with some of the other agencies that are out there making endeavours comparable to what the council is doing; for example, the Workers' Compensation Board or the Industrial Accident Prevention Association. How does the council interface with groups like that?

Dr. McCalla: In two or three different ways. We involve them in council meetings from time to time when there are matters of mutual interest. We have had members from groups like that appear before, I believe, as members of task forces. There is a good deal of exchange at the staff level on a reasonably informal basis. In general, we have good informal contacts with them. We involve them formally on specific questions.

Mr. Dietsch: In terms of some of the questioning that has gone on before us, are we doubling up on some of our efforts in the same area? I guess my concern is that another agency is out there trying to do exactly the same thing you are trying to do. Would it not be better, as has been suggested, to look at reorganizing and restructuring so that individuals have specific areas they can zero in on?

Dr. McCalla: I come back to the point I tried to make earlier; that is, I think we are the only agency that really stands above the fray in the sense that we are not responsible for operating anything. We are not operating an educational authority. We are not delivering health and safety information to clients as the IAPA is, and so on. We are there as an advisory body to the minister.

A group that is charged with operating a series of programs has a different mindset on the world from a group such as ours which has a much broader mandate and is not charged, at least as a group, with operations. So I do not believe there is a great deal of overlap. I think operationally there is no overlap.

We may give advice on areas of education, for example, but I have always believed that to some extent the pluralistic nature of our society and the way we do business is a great strength. I would personally feel a little bit reluctant if we said to one group: "You people have the mandate to do this. Nobody else can give advice on it or interfere."

There is obviously a balance. You do not want people in each other's hair all the time. As has been made clear, we do not have the resources for it. But I do believe the balance we have of a council that has a very broad mandate is quite distinct from the operating agencies you have referred to.

Mr. Dietsch: You indicated to us that the council has withdrawn from the designation of certain chemicals in the workplace. Would you elaborate on that a little bit more? Did I misunderstand it?

Dr. McCalla: Basically, you have the right picture. But be clear that our role is really to take the documentation of the process as prepared by the ministry, the health effects document and the various public comments



that have been made, and to audit, if you like, and comment on the process the ministry had used. For example, was there reasonable opportunity for public input and were the participants told of impending changes and so on? It is also to look at the scientific information that was available and ask if the ministry had interpreted that correctly.

1500

We then wrote an advisory memorandum to the minister which, in a sense, was a critique of their process, the way they had used the information and so on. The minister then, if he felt so inclined, and I guess if we made the case persuasively enough, caused some changes to be made in the designated substances regulations, either the regulation we had commented on or the process. It is obviously, in general, too late to do anything about that, but you can change the way you do things for others.

As I said, it is unclear to me that there will be many more or any more designated substances handled in the way that has been traditional since the act came in. We are expecting revisions to the act. We have the bill I alluded to that regulates 600 chemicals with one fell swoop. I believe things are evolving, so this process probably will be radically modified. I hope very much that the bipartite steering committee will turn out to be a very good way to deal with this. It is the kind of small piece we were talking about earlier that can be bitten off, digested by a group of people who have a real stake in the outcome and a conclusion drawn.

I think we have been useful to the minister in terms of illuminating some of the difficulties in the designation process. I really think things are evolving very satisfactorily without us.

Mr. Dietsch: Does that mean the council then will withdraw itself from that service? It will not be required any more? Is that basically what you are saying?

Dr. McCalla: We have put to the minister, and he has accepted, the notion that we should withdraw from that, yes.

Mr. Jackson: Dr. McCalla, you are a schedule 1 agency and receive your funding from Management Board of Cabinet. I have been talking to several boards and commissions that have received Management Board letters for cutbacks. Have you received something like that? What is your current status?

Dr. McCalla: Would you like to comment on that?

Mrs. Biggar: I do not believe it has been approved by Management Board at this point in time, but my understanding is that there is some constraint that will be applied to the advisory council if it is approved. The precise dollars and percentage as they applies to council, I think, is \$10,000, give or take, but it did not appear to overly affect what we were anticipating for the current year.

Mr. Jackson: That leads me to my next question, which has to do with how you arrived at the two focus areas for your council. Could you expand? I have a clear sense of what you will be doing, but I want to get a better handle on who sets the agenda and how long you feel you will be on that agenda.

Dr. McCalla: Perhaps I should back up and say that in general our agenda setting has been a combination of requests from the minister, some of

which we have entered into discussion on. In the end, what we have actually done is slightly different from the initial request but getting at the same kind of information and issues. Then the other part of our agenda setting has been through the knowledge and the concerns of council members who bring issues to us and stimulate discussion that leads eventually, usually, to a small group looking at the question and coming back with a proposal with terms of reference for a study.

The education and the small business ones both, in a sense, were motivated in part by the survey of joint health and safety committees, because a recurrent theme in the responses from both management and labour on that survey was that more education on workplace hazards, more education on a whole variety of things, would make joint occupational health and safety committees function better.

Council then took that, refined it, dealt with it and decided this is something where perhaps we could have something useful to say. We entered into discussion with the minister and his senior staff on this and got agreement.

Health surveillance is perhaps another example where we repeatedly saw in the designated substances regulations wording requirements that we felt were inappropriate. We entered into discussions, again with the minister and his senior staff, pointing out the difficulties, and they said, "Yes, we would welcome a memorandum on health surveillance." So it is a combination.

Mr. Jackson: But clearly you are spending less time in health surveillance in terms of your council's agenda for the next six months to a year.

Dr. McCalla: Yes, but we have spent quite a lot of time over the past 18 months on health surveillance.

Mr. Jackson: I got a sense of that. I am a little nervous, if given there is some difficulty with the legislation. And that is no one's particular fault; it is something that has been observed and something that needs to be improved.

Dr. McCalla: It is regulation in terms of health surveillance that is the problem, not legislation.

Mr. Jackson: I have heard that line before.

Mr. Breaugh: This is an exchange of opinions.

Mr. Jackson: No, no opinions here.

I want to get a better sense of where you are placed in terms of consultation on the sunset review. I thought Mr. Breaugh's question was extremely good. You danced very well with him; I must commend you for that. Clearly, that is a question which would have been raised specifically by the ministry—a very important question in terms of sunset review—so you would have had to deal with it.

If I were to ask the question from the point of view of what advice you had given the government during the sunset review process, are there any other comments that you would like to add to the ones you have already made, or were



those the limit of your discussions with the government during the sunset review?

Dr. McCalla: What I said essentially encompasses the discussion on this. I think you are all aware that we are not privy to the outcome of our sunset review, so you may be talking to a committee on which the sun has set.

Mr. Breaugh: I got a dance, but I did not get gypped.

Mr. Jackson: I doubt that is going to happen, but I do believe there is room for redefinition. Clearly, that would have been an area you would have been consulted on. However, if you wish to leave it at that, that is fair.

Dr. McCalla: Just so things are clear, we really entered into no detailed consultation in terms of change of role in the context of our sunset review.

Mr. Jackson: OK. I will not interpret that, but I appreciate that piece of information. Like Mr. Breaugh, I have several questions, but we will have many opportunities to get back to them.

Where did your initiatives with occupational health and safety for small business come from? Did that come from the survey as well? It seems to be quite an awkward thing to tackle, given its size and breadth and its variety of circumstance.

Dr. McCalla: The survey revealed that the compliance in that area, small workplaces which use designated substances and are therefore required to have a committee, was not very good, so that was one of the motivating factors.

The other thing, I think, is the experience that a wide variety of people have had, probably in particular the labour members of our council, who are approached from time to time by workers in small industries, often unorganized industries. They become aware of difficulties, problems, indeed sometimes horror stories. It is a very large part of the workforce. I agree it is unwieldy. It may turn out that there is little that can be done, but surely we do not simply ignore it.

Mr. Fleet: There was a report of the standing committee on regulations and private bills that was filed in the Legislature in June. I will refer to it as the regulatory reform report. By any chance do you have any familiarity with that document?

Dr. McCalla: I am sorry, I do not.

Mr. Fleet: I understand you may be coming back.

Dr. McCalla: Yes, if you want us tomorrow, we are here tomorrow.

1510

Mr. Fleet: I dare say I would like to hear back after you have had some opportunity, perhaps even overnight, to review the document. Perhaps it can be arranged through the clerk's office to get you some copies. The relevant areas deal with the principles that are contained in that report. That report was supported by all three parties. It deals with the process of

regulation-making. That is clearly a function that is central to what your committee does, although your council does not do it.

The report is founded really on three principles. One is fairness so that there would be an increase in public participation in regulation-making. Greater accessibility for the public is the second principle. The third principle is that of more effective parliamentary scrutiny. That is in part, of course, what we are doing now.

The process involved having hearings, and in fact we had representatives from the Ministry of Labour. We took a look at the current process of regulation-making generally and with respect to that ministry. I cannot say it much better than what we said in the report.

Talking generally, "Current procedures have several deficiencies. They do not, for instance, give true 'public' notice of proposed regulations. Affected parties are not always alerted. There is no assurance that submissions will be considered. There is no requirement that reasons be published as to why suggested changes have not been adopted."

I take it those are the very issues that previous questioners—Mr. Breaugh perhaps most notably—were asking questions about. One of my concerns, and I take it this is also a concern of yours, is the groups out there who are not easily identified, not perhaps with organized labour in particular. That may be the genesis of a lot of what ordinarily has occurred.

What happens where labour is not organized? Is anybody listening? Does anybody know what is going on out there? Are we communicating with them at all in any way? If we do think we are, how do we measure how we are doing?

The process in the Ministry of Labour that we looked at involved the Joint Steering Committee on Hazardous Substances in the Workplace and also the Occupational Health and Safety Act. The problem there is that you have identified stakeholders. My question is, to the extent that you can give advice or comment, to what extent are we dealing with the other areas? Where, in a way consistent with what this report suggests, can we perhaps improve the mandate, either through the ministry or some other body or your body?

I would think the areas of notice and comment, form and access of regulations, regulatory reform strategy, including a code of regulatory fairness, a citizens' code and the sunset provisions, would all seem to be areas in the report that might be relevant to how you function so that people can understand them, as Mr. Breaugh brought out. When we have something, how do they understand it? It is all those issues.

I realize I have covered quite a waterfront but, other than dealing with them generally, I do not know how else I can fairly raise the issues with you today. I would be interested to hear back further specifics on all those topics. Frankly, it would also assist the standing committee on regulations and private bills potentially, as well as the ministry, on how to proceed with the process of regulatory reform.

Dr. McCalla: Are you saying I get to think about that overnight, or do you want some initial comment now?

Mr. Fleet: That is my preference. I guess I cannot say what the committee will ultimately dictate to you, but I would prefer to give you an



opportunity to read the documents, at the very least. You cannot do that in a couple of minutes.

Dr. McCalla: Nor probably in a couple of days.

Mr. Fleet: The relevant sections, I think, can be read over that are pertinent, because there is reference to occupational health issues in the report. I think that part can be dealt with. They managed to answer other questions of remarkable breadth in a few minutes, so I am assuming that overnight they can really wow us.

Dr. McCalla: Let me just make a couple of comments. First of all, council has shared the concerns of the committee that prepared that report. Part of the thrust of our document on consultation 18 months ago and our advice to the minister since has involved a notion of what really is consultation. Basically we do not believe that simply sending out documents for comment, getting back answers and responses and considering them or not is a satisfactory form of consultation. We have urged that there be opportunities for the affected parties to get together to exchange views, to debate the issues in public. We certainly, in the course of our comments on the designated substances regulation, have taken exception to the changes introduced in the regulations by the ministry of which the parties had no awareness and things of that sort.

The other thing I should say to you is that out of a retreat that we had in May we put a couple of our members to work considering some of the issues that you have described, and they will be presenting to the council in September some thoughts and views on these kinds of things.

I am glad to have discovered that this document exists. I think we could probably make very good use of it. Yes, Dr. Chan, do you want to add something?

Dr. Chan: From the meeting that Dr. McCalla mentioned of a couple of council members, one of the background documents was the report that was discussed just two days ago between those two members, and the issues, especially those you have raised, were discussed in a preliminary sense, but certainly they are coming to council for its discussion. But, as I say, we have just done the preliminary review of that.

Mr. Fleet: Does that mean they are coming back tomorrow to tell me more?

Mr. Chairman: I think they have pretty well told you everything right now that they really want to tell you.

Dr. McCalla: I am willing to take the document and read the sections you recommend as long as they are not too long, and if I have comments to make, I will be glad to make them.

Mr. Fleet: If, as a practical matter, you do not think you are going to be able to add anything meaningful, then I do not mind that being communicated informally. But if there is anything that may be of any assistance to this committee, I want to give you fair opportunity to do it, given that we have only a couple of days set aside for you to be here at all.

Dr. McCalla: I doubt that, other than to say to you that we have recognized that these problems exist, we have commented on these problems and

we are still working on them, I will have very much to add, but please let me have the document.

Mr. Chairman: Mr. Fleet, if there are any specific questions within that report that you would like to ask tomorrow, I am sure they would be prepared to answer them, but I think that to ask them to review the document tonight is probably a little much. However, I would probably like you to do it the other way: If you have some specific areas of concern and you ask some questions on them, they will probably have the answers.

Mrs. LeBourdais: I might comment first of all that the air conditioning is becoming an occupational hazard to my health. I think I am going to have to wear mittens tomorrow.

However, that having been said, Dr. McCalla, I am interested in just getting a little bit of an overview with regard to some of the accidents, if you want to use that word, within the workplace. What general percentages would be due to drugs, due to alcohol and due to general carelessness in spite of the fact that both management and labour have put properly into place what are known to be the preventive measures that they have, whether they be masks, gloves, filtration systems or whatever; but specifically the drug area, differentiated from alcohol, and then the carelessness. Just general percentages, if that is possible.

Dr. McCalla: I am not sure that answers to that question exist. If they do exist, I do not know. Staff are welcome to comment.

We look at the available statistics on a number of things. The area of alcohol- and drug-related accidents is a very, very controversial one. Everybody knows, or everybody believes he knows, that drugs and alcohol do contribute to workplace accidents, just as they contribute to highway accidents and so on. There is a very strong feeling among labour that that hazard is exaggerated over what really exists, and I do not believe that in any jurisdiction, and certainly not in Ontario, there are any reliable figures for that; nor am I aware of any reasonable classification of accidents, although the Workers' Compensation Board may do this, into sort of gross negligence.

1520

Mrs. LeBourdais: I am thinking of failure to wear a harness or a safety belt or whatever.

Mr. Breaugh: Or failure to provide a harness or a safety belt.

Dr. McCalla: Yes. I suspect there may be reasonably good figures for some of that in the construction industry, specifically falls, accidents of that sort.

Mrs. LeBourdais: I was specifically addressing, and I think I put that into my question, where they did exist and it was simply a failure to use them. I would interested in the details.

Dr. McCalla: I am unaware of any breakdown of accidents in the province in that way. I guess the general picture that I have—I am certainly no expert in terms of—

Mrs. LeBourdais: Certainly they must exist, because of the



advertising we see that is specifically going after a worker for failure to use safety equipment that is provided and is mandated.

Dr. McCalla: I think we know that accidents result from each of those causes that you have enumerated. I do not think we know precisely the proportions, and in fact, a great many accidents have multiple causes. If the worker had been wearing the protective device and if this and if that and if the other thing, the accident would not have happened. If all but any one of those things had been done, the worker would not have been seriously hurt. It is the combination of things.

Mrs. LeBourdais: OK. Again perhaps I am going into an area that you just do not have statistics for, not at your fingertips at least. I am just wondering with regard to health and safety if there is a breakdown between the physical as opposed to mental problems that result from the accident.

Dr. McCalla: My response there is again going to be less than satisfactory from your point of view, but I think the accidents are relatively easy, because someone gets hurt. Although it may be complicated in the sense that several things have failed, in the end the worker got hurt because a scaffold collapsed or some other thing happened, so the causation is really very easy to determine.

We had some comments from Mr. Breaugh in terms of asbestos and the shamefully long time it took before society in general was prepared to say, "Yes, asbestos really does cause lung cancer." When you come to the health area, particularly with things that take a long time to develop, the causation is not nearly so clear.

Then you get into the very vexatious area—and you have all lived through the discussions in the House on the gold miners and whether they should be compensated and so on—where you have multiple causation in the sense that the lung cancer could be a consequence of smoking or a consequence of exposure to mine dust or some combination. How do you assess that?

I think we have reasonably complete statistics for accidents. I think for health we are getting better and better, but we are still missing a lot of workplace disease because it happens late, perhaps when the individual retires, perhaps when he has moved from job to job to job so the connection is not made.

In terms of stress and mental health, that is a very controversial area at this point. Certainly there is a large number of people with highly respectable credentials who believe that workplace stress is a major cause of ill health and that we must begin to deal with it, and I believe we will. I do not presume to have a notion of how large a problem that really is.

Mrs. LeBourdais: I agree with you that it has been shameful the length of time that we took to sort of face up to asbestosis or black lung disease, but then again, this building is still very guilty of not as yet facing up to white cigarette disease. We still do not have a ban in this building on that particular issue.

Mr. Chairman: I have a couple of questions I would like to proceed with. Where are your offices?

Dr. McCalla: We are at 400 University Avenue.

Mr. Chairman: Your budget is how much money?

Dr. McCalla: It is in the material that was circulated.

Mr. Chairman: It is roughly \$369,800?

Dr. McCalla: Yes.

Mr. Chairman: What percentage of that would be paid out to specialists that you hire? Would that be classified as "services?"

Mrs. Biggar: You are talking about the specialists who serve on task forces as task force members?

Mr. Chairman: Yes.

Mrs. Biggar: Yes. The per diems are included in the services figure.

Mr. Chairman: Do you pay rent where you are?

Mrs. Biggar: No. That is not reflected in our budget.

Mr. Chairman: That is not in your budget?

Mrs. Biggar: No.

Mr. Chairman: What would your office space be?

Mrs. Biggar: I do not have the figures with me of what our area is.

Mr. Chairman: Just roughly.

Mrs. Biggar: I could bring those to you tomorrow. We have eight office spaces and an open area.

Mr. Chairman: How many full-time staff do you have?

Mrs. Biggar: We have six full-time staff at present and two part-time.

Mr. Chairman: In your budget, I notice supplies and equipment was \$71,000 last year and this year it is \$25,000. What is the \$71,000 for supplies and equipment? Do you have vehicles?

Dr. McCalla: No. That was the year we got our computers.

Mr. Chairman: I see.

Dr. McCalla: That was a major installation.

Mr. Chairman: What else would you have in that?

Mrs. Biggar: The other figures that we have included would be, for example, what are categorized as receptions and seminars. That would include any cost to us in holding meetings, for example, the biotechnology workshop, as well all the meetings we have held that have not been in government—



Mr. Chairman: Who sets the salary for your staff? Is that set by the council?

Dr. McCalla: No. It is really done in consultation, and essentially by the personnel people in the Ministry of Labour.

Mr. Chairman: So then it is based on the schedule that government employees get.

Mr. Furlong: I am interested in the area of the report dealing with sources of information and confidentiality. There is a whole list of areas where you do get your information. There is a protocol set down by the minister.

I wonder if you might comment on the confidentiality of that information and how the Freedom of Information and Protection of Privacy Act applies to you or how you view the application of that act vis-à-vis confidential data that you may obtain in a workplace or from a chemical company.

Dr. McCalla: I think the simple straightforward way of answering that question is that we had one request for release under the freedom of information act for council minutes. Council, as a body preparing advice for the minister, falls in an area that is discretionary in the freedom of information act. In discussions with the minister and the legal branch of the ministry, it was decided that the council minutes were not available under the freedom of information act and, therefore, I think that we would regard any information we have had from other bodies as being not available through the freedom of information act.

Mr. Furlong: How extensive is your investigation in terms of whether you are asked by the minister to advise? I notice in the document that you do not do worksite visits. I recall reading something to that effect, that there has not been a worksite visit by your council.

Dr. McCalla: It is not quite true. There were two of them, but they are so far back in history that that is essentially true.

Mr. Furlong: Is that deliberate, or is there a reason for it?

Dr. McCalla: I think the reason is that the council has felt that its members, through their participation in worksites of various sorts, have pretty good insight into that. We have not really felt that to have been necessary. We have found it very productive to invite people in to talk with them and go over areas of their concerns and get information from them.

1530

Mr. Furlong: If we are looking at the production of a chemical, for example, how receptive are the companies that produce these chemicals to your experts who come in? What is the process? How do you advise them that someone is coming to visit? Is there authority under the act that says they must provide you with the information?

Dr. McCalla: Not that I am aware of. There are requirements under the act that any new chemical, physical and biological agent has to be—what is the term?—reported to the Ministry of Labour before it is used. In a sense, the ministry itself should get it routinely. Then the act provides for them to request additional information as to its safety and so on. When we

deal with chemical companies or other manufacturers as a group, that is there in the background.

Probably the most extensive consultation we have had with them is through the workplace carcinogens, and there we found them very straightforward and co-operative. I think they realize that this is a problem, that society is concerned about it and workers are concerned about it. The large chemical companies are genuinely trying to contain, control and eliminate the hazards. We got very good discussion and co-operation.

If I might add, Dr. Chan reminds me that, again in the area of biotechnology, the Ontario biotechnology firms are desperately concerned that they will develop products, processes and so on, and then find that regulations will be introduced that are very expensive or eliminate that technology. They are, believe it or not, very eager to have regulations so they know what the ground rules are and know what risks they are taking in terms of the investments they are making.

Mr. Furlong: If I might go to a different topic, you answered a question earlier with respect to who initiated your agenda. You gave some indication that it was the minister and there were others. Does most of your agenda come from a request of the minister that you respond to?

Dr. McCalla: No. It would be roughly one third responses to the minister and two thirds sort of self-generated, arising out of previous council business or council studies, surveys and so on.

Mr. Dietsch: I would like to go back to the priorities or goals you set for yourself with respect to education, when you were answering a question by Mr. Jackson in terms of putting out greater education into the workplace, etc. I am wondering if that is not an overriding sort of dual purpose, where the Industrial Accident Prevention Association does the same sort of thing, or do you not see it that way?

Dr. McCalla: I do not see it that way, partly because of the way labour looks at the IAPA. I think there are tremendous problems to be overcome in this province in terms of—let me choose the right words here—presenting the material in forums in ways that are acceptable, at the same time, to management and labour. I believe that can be done. So do most of the members, perhaps all of the members of council.

There are some individuals who believe that mixed training is not appropriate because labour cannot get its message across strongly enough, but in terms of our council, there they are at least a minority and they may not exist.

But if you recommended to our council that IAPA should take this over, you would get a very rude negative response, simply because they have little credibility with large parts of labour. That, I think, is one of the things that council can do because of its makeup.

Mr. Dietsch: Basically, you are saying that the IAPA does not have the credibility within the labour movement. Am I summing that up correctly?

Dr. McCalla: You are summing it up right. If we want a confirmatory opinion I think we have it over there.

Mr. Dietsch: There was an extensive report filed recently with



respect to the Occupational Health and Safety Education Authority. Have you had an opportunity to go through that report?

Dr. McCalla: I have read parts of it. I think it indicates that there is a lot of work to be done in the education authority to—

Mr. Dietsch: Would that be one of the founding factors of why you are going into the educational realm, or did you set your priority before that?

Mr. Jackson: You have already indicated that it was from your survey.

Dr. McCalla: Basically the survey. As I tried to say earlier, we really have no wish to overlap or compete with the education authority, but we would hate to see important parts of the educational picture get neglected for a period of time while the educational authority sorts itself out. For all I know, they may have themselves sorted out and we may hear an announcement tomorrow; but there are so many areas of education in occupational health and safety. We would like to have all people graduating from our schools, as well as the illiterate, which we hope some of them are not, to have some notion about occupational health and safety for their own protection and for what they can contribute to society.

We have the whole area of workers. We have the first line supervisors, and I think a tremendous amount of the conflict in the workplace (inaudible), not necessarily the higher-ups. Then we have the matter of education training of people in the labour movement, people in management who are going to have responsibilities for the delivery of programs and so on.

It is a very broad area. I do not believe any one body will instantly solve all the problems, and I remind you that the education authority is, what, three years old at this point?

Mr. Breaugh: I would like to pursue one other little area. It is my little closing salvo for this afternoon, and Mrs. LeBourdais, who unfortunately had to leave us for a while, sort of raised it.

I often wonder what the world would do if people did not smoke, because every time I turn around, I hear a story of some guy who spent 40 years in a mine with the dust all over his body and all over his lungs and the reason he contracted some illness is that he smoked for a couple of hours that night.

It may be a little oversimplistic, but I must say the frustration level is rising in me over the number of unsafe working conditions that we know of now. It is one thing to separate out the accidents, as you did in response to her questions. I think you can do that. I think with some measure we may never get to the point where we decide there is a way to control stress in the workplace so that there will never be an accident.

I suppose one could say there is a way to sort out drug use, but we would probably have to say illicit drug use or illegal drug use, because nobody I know of is doing very much in an informative way to determine how much in the way of prescription drugs are being used, misused under a doctor's specific care, and what effect that has in the workplace. I think we can sort some of those things out.

I do not think we will ever stop accidents per se. If we could, they would not be accidents; they would be by design. It would be a fault in the

way we go about doing something. But it does seem odd to me that we have never, as I can recall anyway, established known unsafe workplaces in Ontario.

Let me pursue it just a bit further. We have never clearly defined who is responsible, for example, for the health and safety of people who work in mines in this province, who is legally responsible for regulating that industry. Each time that I see a mine death, I see a rather amazing array of people who should have been responsible, including the fact that a miner was charged with looking after safety in a mine in Sudbury, rather a unique situation.

Can you tell me why this advisory council has never tried to identify that as a starting point? It does seem to me to be the logical place to start.

Dr. McCalla: Let me make sure I understand your question or your proposition. You had several threads to that.

Mr. Chairman: Just lean a little bit closer to the mike, please.

Dr. McCalla: Sorry. Your final question was, why has the advisory council not recommended or undertaken to recommend to the minister that in this particular industry, if somebody dies or is injured or gets sick, it is the responsibility of a particular body or individual or whatever? Is that your question?

1540

Mr. Breaugh: No. Let me rephrase it and get a little simpler. There is a bunch of widows from Timmins whose husbands worked in gold mines. We have not been able to determine what caused that problem, who was responsible and who should pay compensation. I bet if you went around to every member of the Legislature in this room now and said, "Don't you think we should do something for those widows?" I think we would all say "Yes." What we have failed to find out is who is responsible for doing that and which compensation fund pays for it. We are still arguing about what was the cause of the illness.

Why have you not taken that kind of an approach, never mind who was responsible for the fact that several men died at Johns-Manville or that several women died in another workplace? Why has this advisory council not advised the minister that on certain occasions it is clear to all of us that compensation should be paid, yet there is no provincial agency charged with doing that?

Dr. McCalla: I guess I have two or three comments. First of all, we have, by and large, stayed out of the area of compensation. You may regard that as reprehensible, but our emphasis has been on what you do in the workplace to put in place measures that will prevent accidents, disease and so on. The other thing is that the whole area of compensation has been a matter of intensive study reports, successive reports by Paul Weiler and others; so there seemed to be a great deal of action and we have not felt it within our mandate to enter into that arena.

Mr. Breaugh: How about determining unsafe workplaces? Why has this advisory council never put to the ministry a list of the 10 starting points for safety in Ontario, 10 types of work that are the most dangerous, 10 workplaces that have the most hazards in them, or three workplaces, whatever?

Dr. McCalla: Again, I think that information is available and the



ministry and the inspectors are aware of that, as I understand it, partly through the Workers' Compensation Board.

Mr. Breaugh: That is true. I admit that this is unorthodox, but I have here an advisory council on occupational health and occupational safety, and it does strike me that, as one of its foremost aims, it ought to be identifying what is an unsafe workplace, what are the worst that we have in Ontario and what are we doing to provide for that. It seems to me, for example, from a widow's point of view, the widow does not care particularly what caused her husband's death. She cares about the problems that are around her. Most of us, as practical politicians, would say yes, the first priority is to look after that individual's needs and the needs of the family; then, after we have done that, let us go back and find out what caused the problem in the workplace and is there really anything we could have done about it. That is the basic political response. We have never really done that.

I am wondering why this advisory council has not laid out for the ministry some steps which would resolve some of these long-standing disputes and some steps which would highlight that occupational health and safety continues to be a fairly substantive problem in Ontario, and we have some agenda items that have not been dealt with yet. I am basically looking for your approach. Why do you not do that?

Dr. McCalla: First of all, as I have said, we have regarded the compensation end of it—you are dealing with the immediate needs of the widow and her family—as the compensation board's responsibility and we have not entered into that. I think you will find that in a number of cases we have looked very hard at causation, and often causation is not a very simple thing to establish. Many times workers and their families are absolutely convinced that a particular thing in the workplace was responsible. The current scientific opinion, often not complete information, would at least question that, and then the assumptions under which compensation will be provided and so on become a matter for people like yourselves and for the compensation board.

We have repeatedly pointed out to the ministry that even within dangerous industries, such as logging, mining and so on, there are major differences in accident rates among firms. Coming to the proposition you raised, that we will never be able to prevent accidents completely, that is probably true, but we could certainly try to get the worst up to the standard of the best.

I think the council really has done a fair bit in terms of saying to the minister, "Look, the system is not adequate." We made that very clear in our paper on consultation, and it was used by your colleague Elie Martel in the House, before it was released publicly, to make a point. We have made many suggestions as to steps that should be taken to try to rectify it.

I acknowledge that we have not done what is sort of the bold, dramatic gesture you are asking for, but I think we have in a large number of ways worked towards that end.

Mr. Breaugh: I will finish on this. One of my little bugbears, and I admit it to you, is that we have allowed the discussion around occupational health and safety to become very scientific. It has become almost cleansed of its original nature. That is my problem. As a practising politician, I am not allowed to discuss with my constituents what is a toxic substance. They do not come to my office with discussions about levels of safe use of a particular

thing. They come to me with their practical, political problems: "The breadwinner in the family has died. We have no income."

People come to me now—I suppose in some measure this is a bit of a tribute to the work that has been done in this field—and say: "I think I have an unsafe workplace. How do I deal with that, because I don't have the resources where I work to form a joint committee. It is not mandatory. I don't have access to information and I don't have a computer in my workplace with which I can tap into some computerized information system." We have come some measure, but in many ways we have obfuscated the basic problem.

The basic problem is not a theoretical safe substance problem; the basic problem is that people die, people are injured in the workplace and still face a very brutal choice. I give you this much: it is the psychology of the workplace.

I recall the first time I walked into a plant in my riding and watched a guy working with a vat of chemicals. He dipped his finger into the vat and licked it with his tongue to test the level of acidity, something which I frankly would not have done. He considered that to be part of his workplace; that is how he tested the chemical mixture in that vat. I do not think people would do that today. But in terms of trying to approach a problem, he surely struck an unusual way to resolve this.

I am wondering whether you have ever said: "Listen, we're just going about this in the wrong way. Is there a better way to have more impact among the population at large?"

When you go to industry and talk economics, it is easy to talk to an industry now, especially a larger one, about substance abuse, for example, because I doubt there is a large industry in Ontario that does not have hard numbers that say, "If you spend \$50,000 on a substance abuse program, your productivity will rise by \$100,000." It is pretty simple to talk to a businessman about that. You have not been so successful about health and safety matters.

Dr. McCalla: I agree with you that the emphasis on taking the available evidence—often, as I have said, inadequate—and arriving at what is said to be a safe level is a pretty rudimentary way of going about things. I think if you look at the history of the acceptable levels for substances like benzene, you will see that a few decades ago they were up around 100 parts per million and they have come down progressively.

Council has worked very hard, and I think there is some response, though not as much as we would like to have seen. A lot of the ministry documents talk about the ALARA principle—as low as reasonably achievable. We have been concerned by the lack of vigour in working with industry towards that. It seems to me that one of the things we all ought to be doing is taking steps to make things better. We may not be able to take huge steps to start with, but if we gradually get levels down, as we have been doing, things will continue to improve.

The other thing we promoted very strongly in our advisory memorandum is that each workplace ought to have a workplace control program. We are going to talk about the workplace hazardous materials information system tomorrow. Large elements of this kind of control program will come into effect with WHMIS, the workplace hazardous materials information system. We have now been



part of the devising of WHMIS as a body—some of our members have participated—and we have strongly supported it right from the beginning.

Mr. Chairman: I think we can leave it for now and come back tomorrow. I am sure with what you have got here today, you will probably have some statement tomorrow again, if you want to elaborate on some of the questions that have been asked—a short one perhaps. We may have some more information tomorrow and some more questions. We would like to be able to conclude our investigation into occupational health and occupational safety tomorrow afternoon some time. If you will come prepared tomorrow, we will be here, waiting with some more very excellent questions for you.

The committee adjourned at 3:51 p.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL SAFETY

TUESDAY, AUGUST 23, 1988



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)  
VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)  
Black, Kenneth H. (Muskoka-Georgian Bay L)  
Breaugh, Michael J. (Oshawa NDP)  
Dietsch, Michael M. (St. Catharines-Brock L)  
Furlong, Allan W. (Durham Centre L)  
Lipsett, Ron (Grey L)  
Martel, Shelley (Sudbury East NDP)  
Runciman, Robert W. (Leeds-Grenville PC)  
South, Larry (Frontenac-Addington L)  
Velshi, Murad (Don Mills L)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Dietsch  
LeBourdais, Linda (Etobicoke West L) for Mr. Black  
Marland, Margaret (Mississauga South PC) for Mr. Runciman

Clerk: Deller, Deborah

Clerk pro tem: Arnott, Douglas

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Advisory Council on Occupational Health and Occupational Safety:  
McCalla, Dr. Dennis R., Chairman  
Biggar, Virginia, Executive Co-ordinator  
Chan, Dr. Penny, Research Officer



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday, August 23, 1988

The committee met at 10:10 a.m. in room 151.

AGENCY REVIEW:

ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL SAFETY  
(continued)

Mr. Chairman: I will call the committee to order. This is the standing committee on government agencies dealing with agencies, boards and commissions. We are continuing today to deal with the Advisory Council on Occupational Health and Occupational Safety. We have as witnesses before us again Dr. Dennis McCalla, Virginia Biggar and Dr. Penny Chan. Welcome back. We are short a member from the New Democratic Party, but I thought that as there are questions some of the members would like to ask, we could probably proceed with those questions. Do you have an opening statement today?

Dr. McCalla: I do, sir, but I think as it refers largely to questions asked by Mr. Fleet, I would prefer to make it not an opening statement but a statement some time.

Mr. Chairman: That is fine.

Dr. McCalla: We have comments on his specific questions and then I have a couple of other general comments I would like to make, but I will make them all together.

Mr. Chairman: I understand Mr. Jackson has a question he wanted to ask you. Perhaps this would be the opportune time to deal with that.

Mr. Jackson: For the record, Dr. McCalla, can you advise us what is happening with the 10th annual report?

Dr. McCalla: The 10th annual report is now in the hands of the printers. The procedure is that it is then tabled in the Legislature, at which point it is released publicly. It is our understanding that this will happen quickly, but that is in the hands of the minister, not in mine.

Mr. Jackson: Will you be publishing a bilingual version?

Dr. McCalla: This year there will be two unilingual versions. The French version will be appearing somewhat later than the English version. It is council's intention to publish the reports simultaneously in both official languages next year.

Mr. Lipsett: Through our briefing notes, I note in different places that when you dialogue with the ministry and other people you work with, it talks of formal and informal presentations and reports. Can you tell us what is informal and formal?

Dr. McCalla: All of the formal transactions are published in the annual report. They consist of the advisory memoranda, correspondence pertaining to the advisory memoranda, the minister's response to the recommendations in the advisory memoranda and miscellaneous correspondence on council's business.

I do not think I have had occasion to have informal written communications. Our informal communications have been oral. They have explored the minister and ministry's views of council's proposed activities. They have informed us of ministry activities in terms of priorities in the ministry regulations they are working on, things of that sort.

Mr. Lipsett: Also, informal and formal dialogue with the task forces too.

Dr. McCalla: The formal product of the task force is a report which goes to council. That report is then considered by council, often amended, and council's report on the subject is a public document which appears in the annual report. The material for the task force and the task force reports to council are by way of advice to council and are not official or public documents.

Mr. Lipsett: I see reference to an executive committee. Is there an active executive committee within the structure of the council?

Dr. McCalla: No. The executive committee, to the extent it exists, and I missed that in the briefing notes, is that the vice-chairman and I meet informally with staff. It is not an executive in the usual sense with assigned duties, assigned tasks by council and a formal reporting back.

Mr. Lipsett: In the briefing notes, under the heading "Presentation of Briefs," it says your council has sought public input through a variety of alternative measures, noting that formal public hearings are not an option available to the council for several reasons. Can you expand on why that is not an option and what are the alternative means by which you seek input from the public?

Dr. McCalla: Yes. The kinds of input that we have sought I described yesterday, but let me summarize. In the case of the workplace carcinogens, we prepared a discussion paper, circulated it widely, invited comment and held hearings. Before my time, council travelled to Thunder Bay and met with representatives of management and labour there. This was in the early days of occupational health and safety joint committees in the workplace, and I think that was the thrust of the discussion. Groups from Kitchener, again on the same subject, came here. We have also had, as I said, an invitational workshop on the matter of biotechnology.

Staff can add if I have left out important things, but those have been the occasions on which council has consulted more or less formally with a segment of the public. In the case of the carcinogens, I think it was open to any group that wanted to submit a brief and come and appear before us. In the biotechnology case, its being a very new industry with very limited expertise, the decision was made to go with an invitational workshop.

I guess the answer to the first question you asked, why is this not an option? is that this was the recommendation made by council long before my time, and accepted by the ministry, that council should not play the role of kind of a quasi-royal commission and should rather rely on the expertise of its members and on other forms of consultation which are described.



Mr. Lipsett: You mention that the policy was developed before your time. What is your opinion on how it is today and maybe should be?

Dr. McCalla: I think you can argue either way. I do not have a formed opinion on that. I think council could play a useful role through more interaction with the public. On the other hand, that will exacerbate, because of time constraints, the kind of problem Mr. Breaugh raised. All the members of council are paid, but they are essentially volunteers; they have other jobs to do. I think our time for that kind of activity would inevitably be limited; so we would have to be very selective.

Mr. Jackson: I have essentially some supplementary questions on Mr. Lipsett's questions as well. It was in your second annual report, which is now 10 years old, that council came to the conclusion that this was an ineffectual vehicle. I wonder, if I can word the question a little differently, is there any reason why it has not been reviewed for 10 years?

1020

Dr. McCalla: I guess the only answer to that is that it has not been a pressing issue. There are certainly some members of council who believe we should be doing this. There are others who are less eager, let me put it that way. In spite of the fact that we have skirmished with the issue, council has not yet come to a decision to review this and to perhaps prepare alternative advice to the ministry, but that could happen.

Mr. Jackson: I was concerned to hear that your consultation process, to the extent that it was public in nature, was limited to three examples in your recollection. I noticed that one of the rationales provided for not having public-style meetings and open public meetings, as opposed to selective invitation to consult, is that one of the options might be worksite visits, and yet we understand that is something as well that has not engaged the council's activities. Is there a reason there has not been a need for worksite visits?

Dr. McCalla: I think members of council are not convinced that you really learn a great deal by a formal visit to the worksite, as opposed to what members of council are hearing and learning in their day-to-day activities as trade union folk. Many of them are health and safety officers for large unions; so they are exposed to a very wide range of workplace issues, both in industrial and public sector unions, and management people have similar concerns on the other side.

Mr. Jackson: I read the résumés of the members of the council, and they are very learned people. It strikes me that most learned people are more than anxious to go to an empirical view, hands-on experience, as it were, with a matter which is under investigation or study or even reflection. I sense there may be a hesitancy towards worksite visits. Maybe you could be more helpful if you gave us an insight as to why there is this reluctance.

Dr. McCalla: I take exception with the notion that there is a reluctance, except in the sense that formal council visits, I think, are not felt to be all that productive. I think the reason people feel that way is that most of us, through our other activities, are involved in visits to worksites of various sorts on a pretty regular basis.

Mr. Jackson: Again, you rely on the expertise of one or two individuals within the council who are familiar or comfortable with worksite visits and, therefore, that is incorporated into council's input. It lacks a certain amount of structure, in my view. Perhaps it is my way of looking at things.

Dr. McCalla: I can see your point of view and where you are coming from, but I think all of the trade union folk—and we have now six labour, six management and five public sector members—are involved on a very day-to-day kind of basis in occupational health and safety.

Mr. Jackson: If I can wonder out loud, can we make the point that perhaps worksite visits in and of themselves become weighted in favour of one of those two groups? Is that a consideration?

Dr. McCalla: I do not think so.

Mr. Jackson: It has never been raised as a concern?

Dr. McCalla: I think the members of council are quite comfortable with the balance of influence, if you like, on council.

Mr. Jackson: In fairness, I get a sense that it is very hard to influence the council, given its remote nature. I get a strong sense of that in listening to you and reading the materials and so on. Maybe it is our political nature; we find it very difficult to be effective when we are that distant. Would you like to comment on that?

Dr. McCalla: I am not sure we are as distant as you think we are. We have had a variety of issues raised through management and labour members of council listening to their constituents, if I can use that term. I think the council is quite approachable.

We get every year a number of pieces of correspondence suggesting we do things, many of them not within our mandate, and we try to refer them. Perhaps council staff would like to add to what I have been trying to say.

Mrs. Biggar: Regarding the comments Dr. McCalla made with respect to the importance of worksite visits, it is not that the importance of them is not recognized. There is the importance of worksite visits by a variety of people, organizations or the ministry. But council has not played that particular role of involving itself in specific ongoing cases, seeing that more as a ministry responsibility and council's role being more with respect to overall policy. That does not mean, of course, that having more details with a specific case does not help you with the general issues.

There are a number of other cases in which we have had input from parties involved in specific cases. For instance, we had a visit from members of management and labour from the steel companies, discussions about their problems with internal responsibility. We had meetings last fall with a variety of people from different organizations. Council meets periodically with outside people and tends to be involved with management or labour in organizations such as the task force.

Dr. McCalla: Let us take the steel company example and amplify it a bit because that is a worthwhile one. We were very intrigued when we learned of some of the developments at Algoma, if I can still call it Algoma, in terms of a very unfavourable health and safety record, followed by a determination



on the part of many from labour to do something about it. They had put out tremendous efforts.

There was really a marked improvement in their experience. I guess you can argue that it would have been preferable for council to travel to Sault Ste. Marie to see the plant and so on. In fact, what we did was bring the management person chiefly responsible for it and the labour person chiefly responsible for it to council. We spent two or three hours listening to their presentations and talking to them and so on.

Dr. Chan: I think the importance is to stress that council members are only wearing a council member hat for maybe two days a month. The rest of the time they are in the workplaces and they have concerns. They recognize these concerns and they see council as a forum for discussing these concerns and bringing them up at council. Both from their own personal experience and because they are members of council, they are known to other people in their constituency to be able to bring their concerns to council.

Perhaps the most remote from it are council staff, who work every day of the month in an office, but their contact with the council members who are in the workplace does keep them very strongly oriented to workplace concerns. In terms of remoteness, it is not as though council members are full-time members who are sitting there day after day discussing only at a policy level. Their concerns are very real and very much for the workplace parties.

1030

Mr. Jackson: I get a very strong sense that council's agenda is driven very much from the top down, from the ministry, as opposed to being from the bottom up. I qualify that by saying I get a sense of that. When I look at systems and study how they operate, I am concerned about the nature of the operation of the council in terms of the access points for the public. I have heard a rationale that we must bear in mind that there are certain regulations which prohibit you from operating in an open, public fashion. I understand that point. I understand that you have a 10-year-old resolution by council not to pursue that course of action, so I ask, why is that not being reviewed?

As legislators, we, or some of us who have been here a while, have experience with other advisory councils. I do not wish to compare you, because you get into favourable and unfavourable, but we have examples in other ministries where they have a very dynamic bottom-up agenda. It percolates, and they make a point of promoting access points for the public because it helps strengthen their agenda and make it less political and less arm's-length. You can argue that is more political if it is grass-roots, but it becomes less political if it is not driven through the ministry.

That is why I am making the inquiries. I am not indicting your performance of the last 10 years, but you are at a sunset review and this committee's purpose in reviewing is to determine how to make the council more effective. My questions are not necessarily judgemental; they are probing from the point of view of determining if there is a genuine interest, because we will determine if there is a genuine need, as Mr. Breaugh has indicated, based on the frustrations with talking to the widows of miners and so on.

We all get various circumstances that we have to deal with, and that is an agenda we have to deal with. So we look to some mechanism within the government in order to deal with it, and if it is not your council, then it

will and should be some other forum. Before we abandon that, it is important for us to examine if there is room for redefinition of the role of the council. There are other advisory councils that operate with a different structure for their members and are able to perform in a more active capacity, and there is compensation involved and so on. That was the nature of my questions. It is something I would still like to pursue further.

Dr. McCalla: May I make just one point? I suspect that if you examine the situation, the grass roots, at least the organized labour part of the grass roots, are very much better organized in this sector than in the sectors in which some other advisory councils operate. That may not be a reason for not being more outgoing and publicly accessible. Certainly, council would be very interested in the comments of this committee.

Mr. Jackson: One could reasonably argue that they are more active as a response to the fact that the agenda is not being driven. Again, as politicians, we understand political systems and what makes things happen. When I see a group that is (a) frustrated and (b) active, it means it feels there is room for improvement in terms of access points to the agenda here at Queen's Park. I would hate to see the council bypassed, and we all know that there are examples of that, because they surface on the floor of the Legislature.

Mr. Chairman: On that note, I think it would be an opportune time for me to intervene here. I will gladly put you back on the list, Mr. Jackson, but I understand that Dr. McCalla has some remarks he would like to make which flow from questions asked yesterday. We have held that off until some of the other members who were involved in those questions were here. They are here now, and I would like you to proceed now, Dr. McCalla, with the statement you have pertaining to questioning that was done yesterday.

Dr. McCalla: I would like to come back and give Mr. Jackson a bit more detail on the origins of the various advisory memoranda for the last two years, but while staff are providing some of the information that was requested yesterday, I can do that, so I will return to that.

One of the things we were asked to do yesterday was to comment on the recommendations in the brown book here from the standing committee on regulations and private bills. I thought we might do this in two ways. I have asked Dr. Penny Chan to review for you some of the recommendations that council has made on the subject of consultation and I think you will see that there is a high degree of consistency, at least within the spirit of the committee's report.

In doing this, Dr. Chan will also review, in terms of the designated-substances regulations at least, some of the processes we have been involved in, because there were several times yesterday when interest was expressed in council process, and I think we skirted around some of those issues without going into them as deeply as we perhaps should have.

If I may, I will turn the session over to Dr. Chan for a few minutes.

Dr. Chan: Mainly, in response to the process questions and reading the report on regulations, I went through and looked at the recommendations superficially, not specific recommendations, and most of council's advice on process for developing regulations has pertained to the designated-substance regulations, as Dr. McCalla described yesterday.



The main reason for this was in 1978, right at the very beginning of the first annual report, I think it was the second advisory memorandum, it set out a process for developing—it did not specify only regulations; it was for developing standards, guidelines and codes of practice in occupational health and safety.

In that particular piece of advice, it set out quite clearly a process, some of which I will go through, and I will give Mr. Fleet a copy and anyone else who would like one of these. The ministry adopted a process very similar to that outlined for developing the designated-substance regulations. As mentioned yesterday, the only requirement in the act for notice and comment is specifically for the designated-substance regulations. Then, by mutual agreement, council took on the role of reviewing this process for the designated-substance regulations. According to its own advice and with agreement from the minister, it restricted itself to looking at the process.

There were three parts to the process it looked at: One was the consultative process, as was described earlier; one was the technical process about the assembly of the information, and one was the legal process.

It is also interesting that in some cases council was not even aware of some of the other regulations that were developed and the process that they went through. It seemed to be by who knows what process that we were looking at the designated-substance regulations. We took on that role; we were assumed to be taking on that role.

In council's early advice, it was not in the form of formal recommendations, but it was a commentary and it is given in point form as to the various steps in the process that council recommended. Most of them were regarding the need for an open consultative process. There were more specific comments in later years during the process of reviewing the designated-substance regulations. Some things, like the length of comment period and many of these issues, are dealt with in the report that Mr. Fleet gave us yesterday.

Another one that we had specific recommendations on was the need for the public to be informed of the rationale for setting regulations and, also, if there were going to be substantive changes following the publication of a draft regulation. There were also recommendations on the need for peer review of health documents, which Dr. McCalla alluded to yesterday.

The three points that I have brought out as specific issues were heeded by the minister and, subsequently, there was a plan and a sequence laid out and made public by the Minister of Labour. He informed the interested parties of changes that had been made throughout the process of developing it and, as Dr. McCalla described yesterday, the health-effects documents now are routinely sent out for peer review. These were the types of process issues that council dealt with which were received by the minister.

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With respect to the regulations generally, on numerous occasions council has stressed the importance of consultation, allowing for public comment, recommending mechanisms for this gathering of public comment and involving the affected parties in developing the regulations at the very early grass-roots stage.

Council, in some of its meetings with ministry personnel, questioned who

was being informed when it had public meetings. Who was the public? How were they identifying the parties which were interested and affected? Who were they sending out the information to?

There was also discussion in council of the differences between the legislative process, the idea of having hearings and committees in the Legislature, as opposed to the process for developing the regulations. There was discussion and questions on whether the same types of processes for developing regulations should also be applied to, at least, amendments to the act, discussion in the early stages, putting it out for public comment.

Council has also discussed the importance of guides to regulations and we have made recommendations in this respect. Again, many of the specific recommendations have been on designated-substance regulations, but there is the need for a simple guide, an easy-to-read one anyway, at the time the regulations are promulgated, spelling out what is required of which parties, how to comply with the regulation and to whom it applies.

Council has made various other recommendations which I think are consistent with the recommendations in the report. Council has questioned the value of certain of the regulations, which has led to a question about the priority-setting process within the ministry, asking how the decisions were made about which substances should be regulated; which led council to identify a need for a process to determine the priorities and led to further advice on that; the use of cost-benefit analyses; and the need for compliance, at least, with the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms. These issues have all been discussed in some of council's advice.

These are specific examples according to process. As there were some questions with respect to the designation process, I thought maybe I could just go through in very brief detail the process the ministry went through and how the council fits in. Would that be of use to you?

Mr. Chairman: You may proceed.

Dr. Chan: The ministry would assemble background information, health effects documents, use of the substance, as the case may be, in the workplace. Often they do this through the use of a consultant.

Then there would be a decision made that this substance was important; a notice of intent to designate would be published, then there would be a period of time when briefs could be submitted. There were meetings and plant visits conducted by the ministry.

Then there would be the publication in the Ontario Gazette of a proposed regulation. Again, there would be a comment period where there would be receipt of briefs and meetings with affected parties, which either the ministry identified or which were requested by parties. Then, according to these comments, the proposed regulation would be revised and presented at an open meeting where the changes were discussed.

Council has sometimes questioned who was invited or who was informed of these open meetings because they were not actually publicized in the newspaper but they were open discussion meetings.

As a result of the comments which were there—and sometimes briefs were submitted—after that, the document would be revised again. Only then would it be submitted to council. It would be submitted to council with background



information on the process that it had gone through, the rationale for developing the regulation. Council would go through the background and the process, usually using a task force of people, some of whom would be council members and some task force members who were appointed specifically for their knowledge of that substance or were coming from industries or unions that would be affected by this particular regulation.

Council's advice would go to the minister and then it would be the minister's decision whether changes would be made accordingly.

The actual process the council would go through, as I mentioned, was done via a task force. In reviewing the information, the task force would prepare a set of questions that it would submit to the ministry, and many of these questions were asking the rationale for a particular provision in the regulation, asking the reason for choosing this substance. There was discussion, both formal and informal. There would be a meeting between the task force and ministry personnel to discuss these questions. It was informal in some respects, but the summary of the discussions is published at the back of the advisory memoranda on these, which captures the points made in these discussions between ministry personnel and task force members.

These meetings provided a very useful forum for both the ministry personnel and the task force to understand why things were done. As I say, some were rationale and some were specific points, and many is the occasion that the ministry has said, "Oh yes, we were thinking about doing that in this way," and would go back and make revisions without actually going through the council for formal advice going to the minister. So a lot of value and impact was had at that level of meeting between the task forces and the ministry personnel.

However, the formal report would then go to council for its decision as to the recommendations that would go to the minister.

That was on the sort of process issues. The second issue I was asked to address, which I will just briefly mention, was specific recommendations that had led to action.

I should preface these comments by saying it is very hard to tell whether it was specifically council's advice that led to it. Obviously, council would like to believe that if a change was made and it was consistent with council's advice, then council was the initiator, but a lot of these things were heard from other parties. Probably they were things that had been contemplated by the ministry and council just tipped the balance; who knows the reasons.

There are a lot of very specific examples that council could probably take credit for, going down to the really specific things like the type of washing facilities in some of the construction regulations and up to the much more general and policy-type issues.

Many times council had talked about the need for inventories in workplaces and, as you know, that has now been incorporated into the bill to amend the act under the workplace hazardous materials information system. The additional provision that is added in on top of the WHMIS agreement is the requirement for workplaces to have an inventory, so this is one the council had made on a number of occasions.

Other examples are the recommendations on joint health and safety

committees that came out of the survey. Many of these recommendations were included in the proposals to amend in Bill 106, which was the bill to amend the act. Many of council's recommendations on joint health and safety committees were incorporated into that.

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With respect to the health effects of technical process issues, council's advice on the interpretation of epidemiological studies has been used and quoted extensively by the ministry.

Medical surveillance has a very interesting history. I think the fairly detailed advice given on the criteria that should be followed before medical surveillance is incorporated into regulations was quoted as the reason for re-analysing whether medical surveillance should be in the designated substance regulations, and the subsequent actions taken by the ministry led council to two further pieces of advice on specific points on that issue which are now being questioned. I could go on.

Mr. Chairman: I have a couple of questions that lead out of that. You indicated a very short time ago that you had made some recommendations to the minister with regard to having them enclosed in legislation. What are some of those recommendations that you have made to the ministry?

Dr. Chan: On medical surveillance?

Mr. Chairman: I believe it was Bill 106 you were talking about.

Dr. Chan: Yes.

Mr. Chairman: You have made some recommendations to the minister with regard to some recommendations to be included in the legislation. What are some of those recommendations you have made?

Dr. Chan: The size of committees, the regularity of their meeting; I have the list here of the ones they included. There are quite a few on the joint health and safety committee structure and functioning. I cannot remember how many of them exactly.

Mr. Chairman: You are talking about when you have meetings and that type of thing. What I want to hear is what you have recommended for the solution that is going to save some lives. I am not talking about meetings; I want to talk about saving somebody's spouse.

Dr. McCalla: Well, the general thrust of those recommendations is to improve the operation of joint health and safety committees. If we can do that, and if we can enhance their stature in the eyes of management and get management to take their recommendations more seriously, we believe the workplace parties can in fact solve a lot of the existing problems.

The workplace parties in many cases are just learning how to operate these committees. There is the question of balance. There is the question of the fact that their recommendations are made to management, but there has been no obligation for management to respond. One of our recommendations was that management should be required to respond specifically to each of the recommendations, stating why the advice is not taken.

Our members believe there are really two ways to go in this business.



One is more rigorous enforcement, with a larger inspectorate and so on, or better, more effective internal responsibility.

Mr. Chairman: Mr. Breaugh.

Dr. McCalla: I would like to finish this off and then respond to a couple of other things arising out of yesterday, if I may.

Mr. Chairman: Please do.

Dr. McCalla: In a sense, just to complete what Dr. Chan has been saying and to respond to Mr. Jackson's questions, bearing in mind that much of our activity had to do with review of designated substances regulation—that is a ministry-driven part of our agenda—I can say that in the last two years and in the 10th annual report, which you will see eventually, we had in each of those years two advisory memoranda—two out of six, two out of five, two out of four—that had their genesis solely within the concerns of council and were not part of the ministry agenda. As we move away from spending our time on review of designated substances regulation, we will have more time and resources to deal with the bottom-up agenda.

The other thing I thought I might do is read to you two recommendations out of our report in 1986 on consultation. I think we may have been arguing about mechanism. We certainly have not been arguing about council's view of what needs to be done versus your view of what needs to be done. Recommendation 86-20 reads, "That the Minister of Labour take the steps necessary to provide a public forum for all interested parties to debate the premises underlying the act and its enforcement and to consider alternative structures." Your view may be that council should be doing that and that may be appropriate, but certainly counsel is on record as supporting the necessity of doing that.

The recommendation that followed was, "That the Minister of Labour involve the affected parties in the process of resolving concerns about the policies and programs of the ministry and make every attempt to build consensus for proposed solutions." Those recommendations followed a very blunt page or two, which I think Elie Martel read out to you in the House.

One other thing I sensed yesterday was that there is concern about overlap between council's activities and activities, perhaps, of the education authority, the safety associations and so on. I think I have made the point that council does not operate programs, whether educational programs or other things, but is involved in policy proposals and analysis and some auditing.

The role of our task force on education will be to make suggestions as to what should be done, the groups which are appropriate to do it, and perhaps most important of all, because there has been very little of this in the education and training field, to make some suggestions about how performance should eventually be evaluated. Emphatically, we would not be responsible for devising programs or operating them.

I would also like to return to the comment made yesterday by Mr. Breaugh. I think his comment, as I wrote it down—you can correct me—was, "We have a nice law but we have not yet figured out how it applies." That is more or less, I think, what you said. I would submit that a great portion of council's activity has indeed been directed at trying to figure out how to

extend and improve the coverage of the existing law and regulations in a very meaningful way.

Mr. Breaugh also noted that we are dealing with the psychology of the workplace, and in effect, trying to change human behaviour. We all know how difficult that is. Council spends a lot of time debating its role and trying to decide the best way to use its limited resources.

Finally—I am not sure, Mr. Chairman, whether this is the appropriate time—in terms of whether the council should continue, I would make two points.

First, it seems to me that in a complex area like occupational health and safety, there is some advantage for the minister in having a body that to some extent stands outside the fray and provides advice.

I think we all recognize that resources are limited. We spent quite a bit of time talking about that yesterday. It may well be that new arrangements could make use of the available resources much more effectively. Council, at times, has itself debated whether it should continue. At one point several months ago, 18 months ago or so, the figure of speech used was, "Should council commit suicide?"

In the end it was decided that we did have a role; members believed there was a role for council. So my second point would simply be to make a plea for orderly evolution in terms of where we are now to something that is equally good or perhaps better. I do not think any member of council will go down fighting to preserve council as it stands. I think we would fight for what council tries to do and for some mechanism which perpetuates that.

Mr. Chairman: Thank you, Dr. McCalla; Mr. Breaugh.

Mr. Breaugh: I preface this by saying that everybody is safe on what I am going to say now. There is no one in the room who was, I think, part of the government of the time. I do not even think the council was created yet.

When the first occupational health and safety bill went through this Legislature, I recall sitting in committee rooms. Almost as an afterthought, members of the Legislature said, "How are we going to set standards for this kind of stuff?" Staff of the ministry said, to paraphrase them, "Well, if you gave us six months, 12 months, maybe 18 months, we could set those for you." So we, like the jerks we always are, sat around and said: "Sure, that's a staff function. They will set the regulations that will make the law work."

A little more than a decade later, we are beginning to set those regulations, to set those levels. The Advisory Council on Occupational Health and Safety, of course, has been part of this process because much of what emerged as controversy was referred to the council for its comment. The council did the sorting of learned opinions on the matter, facts as it could get them and made recommendations to the ministry.

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I do not really want to lay blame with anybody because if anyone is to blame, it is the members of the Legislature. We ultimately, jerks that we are, pass laws and the laws are imperfect. Sometimes they are imperfect because we did not have the presence of mind to say that the most important thing in the passing of a health and safety law is not good intentions; it is hard fact.



What is the hard regulation that somebody is going to enforce and who the hell is going to enforce this thing? How are you going to gather up information in the workplace about emission levels? A lot of that, as I understand it, now depends in some measure on how you collect your data, where you place machinery, who interprets those results and how regularly you collect those things.

These are all questions that, I suppose, to let ourselves off the hook, we did not know about either. We had never done this before and in not many places in the world had that been done. But to be blunt about it, I think what we have wound up with is a rather imperfect process. We do have a process now. We have a mechanism, I suppose, for sorting out different opinions and facts that have been presented. That mechanism is, in part, this council. It makes its recommendations to the ministry and then ministry staff, in effect, set the regulations.

This is the problem I have. I suppose it was quite reasonable initially to say: "We will have a nonpartisan advisory group which will sift its way through all of this and make recommendations to the ministry. The regulations will then be set and will then be enforced."

In truth, we do not have that. As much as we would like to think we have that, we really do not. It is not that clear-cut. It is not that concise. It is not like the Highway Traffic Act where we say, as members of the assembly, "We do not think people should be driving more than 100 kilometres an hour." The Ontario Provincial Police says: "All you have to do is give me a little radar gun and I will go sit on Highway 401 and point it at Mike Breagh as he comes by in the morning. When he does 102, I pull him over and write him up."

Mr. Chairman: Is that what happened this morning?

Mr. Breagh: It was close. Health and safety stuff is not quite like that. I wish it were, but it is not. As we go through, for example, reports that have been put forward now, I recall the arguments about coke oven emissions from day one. We are now beginning to establish regulations in that regard.

The same thing is true of standards for asbestos, for silica and for a variety of materials that are used in the workplace. The one thing I would like to pursue a little bit with you this morning—of any group that is around, probably this advisory council could tell us—is, is there a better way to set these regulations? Is there a more direct way to get this information put forward?

Just before you answer, I want to tell you what you probably already know. My ears are full of complaints from people who say: "The ministry set the wrong standard. It does not gather up the right information. The regulations are incorrect. The techniques for enforcement are wrong." What I am at a bit of a loss to put forward, though, this morning is how we correct that. I am seeking your advice.

Dr. McCalla: That is a very big question and one the council skirmishes with among itself repeatedly. Let me begin by saying what I think is the philosophy of level-setting in occupational health. This is true, I think, not only in Ontario but in a great many jurisdictions.

I think the approach has been to look at the available data. Most of it will be industrial experience, supplemented with animal toxicity data and so

on. Using the data that are available, to try to hit at a level that will not affect the health of individuals.

Obviously, there is a series of problems here. One of the problems is how good is the database. Typically, the database is really not very good. Let me just repeat that the ministry has on occasion tried to do a calculation of the level of a particular compound that will produce a particular level of effect. When you do those calculations, because of the limitations on the data, the uncertainties are very great, so you end up saying the safe limit is somewhere between, let us say, 0.1 part per million and 50 parts per million, and that is all science can tell us.

At that point, it becomes a matter of what kind of safety factors you are prepared to build in and pay for. I just note in passing that the safety factors in occupational health tend to be factors like one or 10. There is not very much of a safety factor built into these compared to, say, drugs or pesticides where the safety factor would be in the order of 100 to 1,000.

I think one of the things you are challenging is the philosophy of the regulations and I submit that is basically a political matter, because we are contending in the realm of values.

Mrs. Biggar: It should also perhaps be noted that what was described about the designated substances regulations was in, somewhat, a historical context now. Council has raised concerns on an ongoing basis about the need for involvement of affected parties early on in the process of the consultation. Now, with the formation of the joint steering committee which involves management, labour and government in that process, they are working towards potentially a new approach and process for the development of these.

Mr. Breaugh: The difficulty I have is that we have accepted now and put in place a process for the setting of regulations that is very difficult for the ordinary person to understand, to be polite about it.

We may well have made a gross political error by accepting the act without the regulations. Hindsight being the wonderful thing it is, I think I would like a chance to go back to those hearings in the mid-1970s and say, "We developed this as a political issue and a political awareness in Ontario, so that people now understand you should deal with occupational health and safety in a very serious way." It took a long time to get it to that point.

We had it at a critical point. We took the good intentions that you can get in a piece of legislation and said, "We accept that." What we missed was the fine print that, "The regulations will be set." We had no idea what that really meant and we really had no idea, to be fair to ourselves, what was entailed in the setting of those regulations. Well, 10 years later, we do. Have we put in place a process which is in itself wrong?

Dr. McCalla: I am not going to answer that question yes or no. I think all jurisdictions I am aware of have followed more or less the same path, and I think we all underestimated the limitations of the database and the extent to which we are really dealing with values rather than fact.

The basic question, I suppose, is, what is a life worth? When the ministry sets a regulation—I guess isocyanates is a good example—because of the fact that isocyanates are sensitizers and a small proportion of people become sensitized at very low levels, there is a level that they have set which they themselves acknowledge will cause sensitization and allergic



effects in a proportion of the workers. Is the philosophy right? Is the level right? Those are questions of values and politics, and I think we have only come to realize that relatively recently.

In terms of your question, are we doing anything better, I think the joint steering committee comprised of labour and management, chaired by Tim Millard, is at least a way of trying to get a forum of a different sort involving the players, the people who are really involved in the workplace, to debate these issues and see what comes of it. I think that, in terms of process, is a step forward. I reserve judgement on whether it will ultimately produce—

Mr. Breugh: I will leave him alone after this.

We did not have a lot of choice, to be blunt about it. This is the way the world had gone about regulating this kind of thing. From our frame of reference, the only other thing that was related was environmental matters, where much the same kind of a process was established. Someone assumed that you could define a safe level no matter what the substance was.

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To be blunt again, we lost the political argument at that point. Once somebody puts in an Environmental Protection Act, the political argument is muted, because then you are out talking to your constituents about parts per trillion, about some chemical that neither one of you can pronounce. That is a different political argument than, "Those folks are poisoning your children," which is a more succinct and neat political argument, the kind I would prefer to have.

I am confused as to whether there was really another way to go. Should we have said, for example, "Some substances cannot be used in the workplace, and if you use this substance in your industry, we will shut you down"?

I want to remind people around this table that when we talked about asbestos being a problem in the workplace, it was all very fine to talk about that in theory, but in practice in this building when we discovered that we had pipes lined with asbestos, what it meant for us when we wanted to repair that is we shut down the north wing. All the offices were vacated; everybody came in with masks on; the material was removed totally and the whole process was shut down while that was done.

To suggest that to an industry would cause more than—for members of the Legislature to have to go away for three months is a pleasure, but to shut down an industry and have all the workers go away for three months while that kind of repair is done is perhaps a different matter. So the argument changes ground.

I would be interested, just in conclusion, in whether you have any comments about whether we could have had an alternative process; whether at this late stage we could opt for a different way of setting these regulations. Did we make a mistake in saying, "The substance can be defined in a regulatory manner at certain levels as being safe"? I am not sure that anybody could really say that some substances, even minimal trace elements, over a long period of time are safe. We do not really know that and we probably never will.

Dr. McCalla: I would add to that, even if they were safe when they were mined, in machinery that is working perfectly there will inevitably be spills, accidents and so on, and that has to be taken into the equation.

I think one of the things that could have been done and still can be done is to put much more emphasis on making things progressively better. I touched on this briefly yesterday. We have seen situations—I think vinyl chloride is an example—where the level that the ministry set was higher, if I recall, than was actually being achieved in the large chemical plants that produce vinyl chloride. I do not need to explain to you how there is a temptation to backslide. If your competition is reading two parts per million, why meet the cost of anything better?

So we have not had enough thrust—this is my personal opinion and I think it would be shared by many members of the council—to take where we are, perhaps to set the levels as we have done, and say: "Look, this is a civilized province and no way can you go above two parts per million of vinyl chloride. But, by golly, over the next five or 10 years, you have to meet in a progressive way better and better standards."

There may also be cases where something that is used today can be substituted by something very much less harmful. We should be driving that way. Again, one of the problems has been that things have been banned and substitutes have been introduced. We know a lot about the toxicology of the substance that was banned but we do not know that the compound that was substituted is very much better. I think it is a very complicated way. I do not think there are any simplistic formulae, but I do think we could be driving much more than we are towards progressive improvements. I think those would be affordable.

As you probably know, in the case of vinyl chloride, there was a lot of agony on the part of industry that it would become uncompetitive by reducing the levels in the workplace. They found in fact that by recovering the vinyl chloride, which is a highly saleable product, they made money by decreasing exposures in the workplace. So I think it has to be evolutionary.

Dr. Chan: I would just mention the different process of what we intend to call the 600 regulation, whereby there was a regulation that was similar in nature to the designated substance regulations but, with some exceptions, adopted a list of exposure levels equivalent to the American Conference of Government Industrial Hygienists, which is used in the US and adopted in many other places, for more than 600 substances.

That regulation had very similar provisions in it to designated substance regulations. It could not go through the same process of development. It did not go through all these steps we have described, yet it immediately laid down exposure levels for more than 600 substances.

A number of questions were discussed in council about that. Is it better to have a level than no level? If you had adopted each one of these by the same process, how long would the argument have gone on as to whether it should be 1 or 2 or 1.5 or 1.2? Is one really safe or is that what is economically feasible? These have been relatively adopted over the world but there was no—well, when I say no, there was certainly not the same formal process for that regulation.

In answer to your question, it is a totally different process of setting regulations. There can always be debate on whether this particular level should be reduced, but at least there is one set of levels. This is one approach which can be used when any data come up that indicate these levels are too high or that there could not be systematic reviews of certain substances on the list, to reduce them.



That is a different process. Whether it should have gone through the same review process, whether there should be so much time spent arguing about specific levels as opposed to the way you arrive at them—

Mr. Fleet: First, I would like to thank the witnesses for giving consideration to the report and the related issues and the comments earlier, most extensively by Dr. Chan. Ironically, the questions I had in my mind are exactly on the issues Dr. Chan just left off, and the comparison between the different types of process which sometimes come into place.

If I can just synthesize what you have indicated earlier today, as I understand it, you have one process for designated substances and a different process for the 600 regulation—you have just explained that—and I take it the desire is to have consultation so you get a better regulatory process, which is why you have the process for designated substances. A competing demand is that if you are going to get anything done, you go ahead with it and at least you have got something. Then you work on refining it to make it better once it is in place.

That was addressed in our report, the report of the standing committee on regulations and private bills, trying to find that balance. What I would just like to hear a little more of is whether there were ever complaints or comments by the parties involved in the process, from labour or management, from the civil servants or from members of the council, about the process for designated substances, how that evolved, whether it was too long or too ineffective because of the extensive consultations.

That is one of the concerns we encountered on the regulations committee. It seems to me that it ultimately bears exactly on the kind of question about what a life is worth. You have to make a determination about how much time and attention you are going to spend on the process in order to get a safe result or as safe as we can determine.

My interest is both with process and with the substance of it. I represent a riding that has a significant industrial area and vinyl chloride just apparently helped cause an explosion in the riding, at Nacan. It is a very real problem, how you deal with the regulations and what kind of quality and trust we can rely upon that is going to lie with the regulation.

I just want your views about whether it works better one way or the other or how we determine when we start to apply one process or the other. The designated substances process that you have described is certainly more extensive than even what we recommended in the report as a minimum standard for the whole element.

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Dr. McCalla: To answer your question as to whether there were complaints, the answer is yes, there were certainly a large number of complaints about the time and effort it took for the designated substance regulations and the burden on the labour force that Mr. Breaugh talked about yesterday. I have had complaints, on the other hand, about the lack of consultation on regulation 654. The question is one of balance, and probably, if we continue to designate, we can find ways of streamlining that process and at the same time add some discussion groups to the other.

One of the points that have been made to us by employer associations has been that one thing that process of designation did was to provide everybody

with a very thorough education about the substance so that when that regulation was put in place, industry was really prepared to deal with it. That is not true when you regulate in one fell swoop some 600-odd chemicals. The learning process that people have to go through in order to be able to deal properly with that regulation is pretty horrendous.

Mrs. Biggar: People are perhaps less convinced that that would be the case for small business, for example, and that, I think, was another of the thrusts behind council working with small business and recognizing that you need, in addition, for instance, to regulation 654 on designated substances, a variety of mechanisms, like those connected with (inaudible), other means by which you can make the legislation have effect.

Dr. McCalla: One of the things that struck me in reading your report was the plea for simple language. I think it is true in a lot of occupational health literature that the language could be simplified; ministry and other documents could be much more helpful to the target audience if they were more directed in that way.

Dr. Chan: Can I just add one point on that? I think it is important to have discussion among the parties and the public, because at the same time they recognize their complaints about the system, they do not recognize the complaints of the other side, and there is a delicate balancing act that has to go on. As well as actually educating people to go back and ask the questions about the substance, the knowledge of that, there is also the understanding of the limitations when it comes to how low you can realistically take it. Do you want it so low that you could be assured that it is safe, but do you want your job? The full understanding, and sometimes this is the level of discussion that does go on, is part of the process of developing a regulation. Perhaps it is a process of the parties coming to accept the results as opposed to necessarily determining the results.

Mr. Fleet: If I can understand your point, we are really talking about the voluntary assumption of risk. You cannot make a guarantee of safety but you can reduce the risk. The idea is, first, to have people understand what the risk is; second, to eliminate what you can; third, at the very least, to make sure people are entering a situation with their eyes wide open. Is that broadly what it boils down to?

Dr. McCalla: That is a neat extrapolation from Dr. Chan.

Dr. Chan: I feel slightly uncomfortable with the voluntary acceptance of risk.

Mr. Fleet: I am just wondering if that is where it does not inevitably lead; I am not saying I like it.

Perhaps since that is an awkward place to leave you, I will just ask for one other clarification about the complaints you mentioned. I take it the complaints were that they would want more time, not that they would want the thing to proceed.

Dr. McCalla: I think with the designated substance, as Mr. Breaugh said, it would be easy at first and then, as the various parties got into it, it became a very time-consuming process, and the complaints were that the time involved was too long and the number of substances being regulated in that way was too small.

Mrs. Biggar: There were also concerns, I think, about all the



resources that ended up getting focused on, such as being designated in the workplace, where in the workplace it may not be the national priority, but between the priorities because of all that went on with designated substances.

Mr. Fleet: Is it fair then to say that that kind of concentration of effort can be avoided if there is a more regular system of consultation?

Mrs. Biggar: It is more rational.

Dr. McCalla: I think a more comprehensive approach to regulation is perhaps more rational. I referred yesterday to council's recommendation that each workplace should have a control program. Each workplace would have considered and made available to the ministry an analysis of what the risks were in that workplace.

Then, for example, first to pick up Virginia's point, if the main hazard in your factory is noise, but noise is only regulated so-so—let's take isocyanates as a very minor exposure—if you are made to spend a lot of money evaluating and monitoring isocyanates, that may detract from the resources that go into a hearing protection program. Those are the kinds of tradeoffs there could be.

Mrs. LeBourdais: I am just wondering, since I wanted to switch the area of questioning now, is there anyone who wanted to touch on this particular aspect before I switch it?

Mr. Chairman: We are willing to take some questions from you in the meantime.

Mrs. LeBourdais: Having a very limited knowledge of mining—mining in my riding is somewhat limited, to say the least—I was surprised to read that with regard to underground mines, you do give notice of inspection. Now, apparently in others you do not give notice, which would seem to be the way to go—

Dr. McCalla: Excuse me. You are confusing us. We are purely an advisory body. It is the Ministry of Labour and its inspectors who have the responsibility of inspecting mines.

Mrs. LeBourdais: Therefore, you are not in a position to be able to answer as to why that is. Is that what you are essentially saying?

Dr. McCalla: Yes.

Mrs. Marland: If I may just interject, I could help Mrs. LeBourdais, having just spent three months on the standing committee on resources development, where we did investigate mining safety. That was a very important question and it does bear relevance to the council before us this morning.

The resources development committee actually toured 17 mining operations in the province, everything from salt to uranium, gold and so forth. One of the things that we were concerned about was the aspect, if there is prior notice of inspection, then that is the day, if there are supposed to be two men working in one area, they are there and so forth. They all have their masks on and they are wearing their safety equipment and so forth.

What we did in fact find was that, first of all, there are not sufficient inspectors to cover all the mines in the province and no longer do

they give prior notice. They do not go to the same mine on Monday or the first Monday of each month; it is on an unscheduled basis. I felt better in terms of how the mining operation protected the worker. Where the enforcement and the recommendations go after that is something that is part of the report of that committee.

Mrs. LeBourdais: Thank you.

1130

Mr. Chairman: Do any of those recommendations go to your council? Do you get any of those recommendations from the mining industry?

Mrs. Marland: The recommendations go to the mining health and safety branch.

Mrs. Biggar: We have copies of the report.

Mr. Chairman: You are a safety council. You are the Advisory Council on Occupational Health and Occupational Safety. If there is somebody who is making a report with regard to safety in a mine, why would you not get that report?

Dr. McCalla: We would certainly get it eventually.

Mrs. Biggar: By hearing about it and following up to get copies.

Dr. McCalla: I think one of the things that has impressed us about the mining sector in the last year or so is the activity of other groups, such as yours. We may have something useful to say about the report, but in the interests of not duplicating activities, we have been aware that this is going on and we have not moved—

Mr. Chairman: Mrs. Marland?

Mrs. Marland: If you do not have another questioner on your list.

Mr. Chairman: No.

Mrs. Marland: Then I am very interested in your last response.

First of all, I should make it clear that the group that I was part of was an all-party legislative committee, the standing committee on resources development. Are you saying in fact that your council would not have in the past received recommendations either from the mining health and safety branch or the Ontario Mining Association? I guess the more clear question is, has your council had any involvement with reports and recommendations resulting from investigations into mining accidents in Ontario?

Dr. McCalla: No.

Mr. Breaugh: But you did make recommendations in 1978 to the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining in Ontario, did you not?

Dr. McCalla: Again, that is long before my time, so I cannot speak very authoritatively about it.

Mr. Breaugh: But it is within the council's jurisdiction to make comments on that kind of thing.



Dr. McCalla: Yes.

Dr. Chan: With respect to the report recommendations, it is very hit or miss, if I can use these words, whether we receive them or not. It is certainly not standard procedure that we will receive this information. I think that is the question you are asking. We receive things that a member brings to us, or some of the things are circulated to us, and so on.

Mrs. Biggar: We do also subscribe to Hansard and get copies of the standing committees.

Dr. Chan: But they are not referred to us or sent to us specifically, any of these types of things.

Mrs. Biggar: The final reports. We have not received the report from Mr. Fleet's committee.

Dr. McCalla: I think the way we can clarify this in a general way is that we have had a very specific role in the case of the designated substances, and there I think the ministry has been very good in honouring the process involving council. We have never had, and I think it was never intended that we have, the same role vis-à-vis all of the business of the occupational health and safety branch. You might argue that we should have, but in fact we have not, and with the resources we have, we could not cope with that.

The things that we have done that relate to underground mining have been more in the health field. Years ago, we examined and made recommendations concerned the so-called aluminum prophylaxis procedures that were being used and, of course, we have been involved in arsenic silica as a designated substance.

Mrs. Marland: I am somewhat surprised. I think, first of all, if I may, through you, request that our clerk ensure that the most recent report that was tabled in the Legislature of the resources development committee, which I think we tabled in April or in May—in any case it was the final report this year—be forwarded to you.

I am just thinking of the purview of your council. I am surprised that you would not automatically have been recipients of the work of a committee such as we have just had. Obviously, the fact that the subject of safety in the Ontario mining industry was referred to a standing committee of the Legislature is indicative of the gravity of the subject. In fact, we know that mining accidents have been tremendously reduced in numbers in the last five years in Ontario, but the gravity and severity of the accidents that still happen has escalated. That is the reason we were discussing it.

Certainly in the three months we took to review it, we dealt with all aspects, not only the physical aspects of mining operations as they pertain to occupational health and safety but also the nonstructural and nonequipment risks having to do even with things like lighting and, of course, always the dust problems; they are fairly straightforward, and yet they certainly have gone on for years. I would have thought that would have been something—as you say, perhaps not during your particular term on the council—you actually would have dealt with.

When you are on these committees, you are into all the statistics and the figures at the time, but I have now forgotten how many people work in the

mining industry. I think it is something like 40,000 in the province. It is a substantial labour force. Frankly, knowing all the government agencies that are set up to protect workers in all labour forces in the province, I was amazed to find some of the conditions under which miners in 1988 work in Ontario. Without a doubt—and I think I speak for every member of the committee—when we came back to the surface, we all said, "I don't care what they are paid; it's not enough."

That was not only referring to the conditions of work, which have been improved tremendously in the last decade, but also referring to the inherent amount of risk that is there all the time. The most tragic accidents in the last 12 months had probably been sitting there as predictable risks for a long time, yet they still happened; so if we are looking at occupational health and safety, that certainly is very much part of your purview.

Mrs. Biggar: Could I point out that we did earlier see the recommendations in that report? In fact, we made some comments about the similarity between some of those and some of the recommendations the council was involved in or had just developed or was developing. We do have copies. We have not yet copies to circulate to council, although I imagine some have copies in their own rights; there is a staff member who is working at that now. That is something we would be making available, but we do not have the copies. We would be pleased to have that facilitated.

Mr. Chairman: I would like to move on to a new area at this time. Concerning the establishment and functioning of a joint health and safety committee, can you tell us what input you feel you should have with regard to the comments you made yesterday about the health and safety committee? What input would you have in the new area that you are talking about? You talked about education and about health and safety. What input are you going to have into it?

Dr. McCalla: As staff have already outlined, we have made recommendations, which have been incorporated into Bill 106—which died in Orders and Notices but which may likely be resurrected—regarding composition, record-keeping, the responsibility of management to respond and so on, in trying to strengthen the role of the health and safety committees and the seriousness with which they are taken.

I think the education task force, which has really just begun its work, is likely going to comment upon minimum levels of training that should be set. Here I am anticipating and speaking personally rather than giving you a considered view of the task force and the council, but I think it is likely that we will have something to say about the minimum levels of training that should be compulsory for labour and management members of joint health and safety committees. These would include rudiments of occupational health and safety, obviously, and rudiments of what committees are and how they work.

1140

Mr. Chairman: A number of health and safety committees around the province deal with all kinds of different industries, be it agriculture or whatever.

Dr. McCalla: There are very few in agriculture, sir.

Mr. Chairman: There is one on farm safety whose office is in Guelph. I happen to be aware of it.



Dr. McCalla: That is the Farm Safety Association.

Mr. Chairman: That is right.

Dr. McCalla: May I clarify? The joint health and safety committees are specific to a particular workplace, such as a given mine or a given industrial plant. They consist of equal numbers of management and labour representatives, and their responsibilities are outlined in the act. Very briefly, they are to consider the occupational health and safety issues in that workplace and make recommendations to management. That is quite separate from the safety associations, which are agencies set up under the Workers' Compensation Board and financed out of workers' compensation levies.

Mr. Breough: I would like to pursue, probably at some length, the information side of this and WHMIS and a few other matters. If you want to take a break now and return at two o'clock and do that, I would be pleased to do that. It is going to be difficult to do in 10 minutes.

Mr. Chairman: We could go on a little longer if need be, if we could finish. We have briefings for this afternoon. It is up to the committee.

Dr. McCalla: We would certainly be prepared to stay as long as you want us without a break, if that would be useful, or to come back at two, whatever would be useful.

Mr. Chairman: It is up to the committee what it wants to do. If you would like to go on now and finish with the occupational health and safety council, we can do that.

Mr. Breough: I can do my little bit now and shorten that somewhat, but I do have another engagement at noon. I do not want to preclude other members of the committee pursuing the same type of thing.

Mr. Chairman: Carry on, Mr. Breough.

Mr. Breough: I want to pursue, for starters, the matter of the new Freedom of Information and Protection of Privacy Act and how you as a council are coping with that. Could you give us a little update on requests that you have had, policies that you have set out, whether you think that act applies to you or not, a brief introduction to that?

Dr. McCalla: As I think I hinted at yesterday, we have had only one request for minutes of the current year and the year past. We have had a lot of discussion in council and with the freedom-of-information folks in the ministry. As you know, the freedom of information act includes the matter of preparation of advice for ministers as an area that is discretionary.

Given the fact that our formal advice is published, that essentially all of our meeting time is involved in preparing advice for the minister, the advice we gave the minister, the deputy or whoever in the ministry has to rule on that finally was that we believed this should not be available under the freedom of information act. I believe that was accepted, but I am not positive on that.

Mr. Breough: The reason I am pursuing this is that in another life on another day I am going to sit on a committee which takes a look at the freedom of information act and how it is applied to various ministries and various agencies, so I am interested in that.

One of the basic problems I have now is that here is a council which in its first instance would seem to be the place to go. If you were interested in occupational health and safety and the setting of levels, the setting of regulations and all that, it was initially almost the only place to go. It was not really ever, but I think it was seen by many people, especially on the labour side, as being our access point to this process.

Much of the controversy that surrounds that is what you have just said, that in the final analysis this is an agency which advises the minister. Its opinions then are often critical. What particularly would be critical and useful in terms of argument is precisely what they whispered in the minister's ear: Not what they wrote in the final published report, but what they said in private conversation with either the minister or more likely ministry staff at some point in time.

As we saw in our own little research package here, that is the kind of stuff that is not public information. That is precisely the kind of stuff which might be useful to dig out under something called a freedom of information act and which is not possible to get.

I am just putting up a little red flag here. There is going to be some discussion about how appropriate it is to fund an agency such as yours with public money, to have participation on that from people from management, labour and from the outside and, in the final analysis, to have their deliberations, particularly what some of us might call the most critical deliberations, held in secret, unavailable even after the fact, under freedom of information law. That strikes me as not being appropriate, to tell you the truth. So you should know that. That argument may not be over.

Dr. McCalla: It seems to me there is an issue that goes well beyond our council, that is, whether the current wording in the act is appropriate in making that discretionary.

Mr. Breaugh: I think what it goes down to is our perspective on this council. If this is a little in-house council to advise the minister in private, that is one thing. I do not think you see yourselves in that role, quite frankly. I never have. But if this is a broader council, representative of a natural constituency of labour, management and academic expertise, which makes grand, nonpartisan recommendations to the ministry, then it is totally inappropriate that that should be private information.

In my mind, that is much like saying the Supreme Court of Canada is allowed to whisper its decisions into the ears of the Prime Minister of Canada and the rest of us can never know what was the basis of its decisions or what the decisions were and whether the Prime Minister accepted or rejected its findings. I think we are going to be into an argument about how appropriate it is to safeguard what traditionally has been held as private information, transferred from an advisory council to the government of the day. So we will have that argument again on another day.

Let me quickly move to this other wonderful thing which has been announced called WHMIS. For those who do not speak this language, this is the workplace hazardous materials information system. I have read with great interest all of the wonderful training package that is put out. I look at what I think is a lot of potential here to do good. I see that a lot of good things may happen in the future in the development of this information system. It goes back to things that many of us have been whining about for a long time.

There are a lot of things which are really pretty basic. We do not know



what is in any truck on our highway, just as we do not know what is in our plant. When our fire department responds to a fire at an industrial site, it does not have the foggiest notion of what is actually burning or exploding inside there. By accident, they may actually have some working knowledge, but there is no system at work. There is no system to identify what is on the train that is rolling through Metropolitan Toronto tonight or the trucks that are on our roads or the stuff that is stored in our factories.

There may be information available but there is nothing mandatory about that. For example, to choose another area, in the Ministry of the Environment, we now pretend that we have a billing system which accurately lists what goes on the trucks when they hit the back roads at night. We hope that those who fill out those billing systems tell the truth, but we do not know that.

What this process will do, we all hope, is bump this system up into a more sophisticated mode. It will involve the extensive use of computers and gathering of information. It should make it more simple. The theory, I guess, is that the smallest workplace around, if it does not have access to expertise on its own, will have access to an information system which provides it with that. That is all the good stuff about WHMIS.

Let me turn quickly to a couple of things where I think there might be a little hole in it. What do we do with somebody who has no means of getting access to this information? There will be lots of workplaces out there where it will not be possible for them to tap into this wonderful new system. What are we doing to provide them with some access point?

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Dr. McCalla: The simple answer to that question is that the supplier of materials is obligated to supply a clear label and a material safety data sheet or MSDS.

Mr. Breaugh: I am comforted by the fact that even you cannot remember all this stuff.

Dr. McCalla: I can figure it out, but it takes time. I think it will take some time. I am sure there will be some deficiencies in the MSDSs, but I think there is a change. There are relatively few companies that are major producers of chemicals. Their MSDSs are well in hand, and it will be a matter of purchasers insisting that suppliers supply the MSDSs. I think that the information in the form of MSDSs will be available to everybody.

My concern is whether the person in a small paint shop is going to be able to interpret and understand that, and I think, over a period of time, we are going to have to develop programs to help those folk. There is a ministry hotline. It remains to be seen how effective it will be. I think the trade associations can be tremendously useful within each kind of industry in saying, "OK, guys, here is what the MSDS for toluene really means."

Mr. Breaugh: That is where I see a flaw in the system. I can make a law which says, "You have to take every can of paint that is sold in Canadian Tire and label it." I cannot make a law that says, when I go in to buy that can of paint, I have any knowledge of what that label really means.

Dr. McCalla: But in my experience, I have had several workers come to me and say, "Doctor, I think there is something in use in the plant where I work that is harmful, and I cannot find out what it is"; or they come to me

and say, "All I know is its chemical name; that doesn't mean anything to me." So at least WHMIS is a very big step forward in that way because, except for the proprietary information part of it, workers will know the identification of the chemicals, and that at least sets the stage for them to ask questions and to get help, and similarly with management.

There will have to be some policing and, again, it will be interesting to see how well this is coped with. Of the proprietary information, as I understand WHMIS, there is a body to which you make a case that your trade secret is so vital to your industry that the particular substance should not be identified, but you are nevertheless obligated to provide an MSDS that says to the person, "Here are the properties and here are the hazards," and in case of medical emergency, the identity has to be released.

I think I agree with you that we have a framework here that is a very big step forward, but there are lots of implementation details that are going to have to evolve.

Mr. Breaugh: Could you elaborate for me just a little bit, if you can on what you know of, could I call them related agencies, what kind of participation they have in that: fire departments, police departments, hospitals, medical emergency services? What access do they have to this system? How do they fit into it?

Dr. McCalla: I can give you a partial answer to that. My knowledge is far from complete. On the medical side, I think the poison control centres are well developed, so that if you can say what you have been exposed to, help is available. The combination of WHMIS and the poison control centres I think are powerful allies.

Fire departments vary from jurisdiction to jurisdiction as to their sophistication. In Hamilton, they have really put a tremendous amount of effort into understanding what chemicals are used where. Of course, fire at one of the pesticides plants provides powerful motivation for this kind of thing. In many areas, probably the larger centres, the fire department is pretty knowledgeable, at least in terms of the large-scale industries. They certainly scrutinize the university in terms of the multiplicity of chemicals that we use.

WHMIS will result in the production of the inventories, as Dr. Chan noted earlier. Again, it is going to be a real challenge to fire departments and public health departments to take these inventories and make sense out of them. I suspect what will happen is that we will evolve a top 10, a top 20, a top 50 toxic chemicals, and for a while attention will be focused on them and will gradually—

Mr. Breaugh: One of the problems I see with this, and I do not understand this in Ontario law, but every place in Ontario, every municipality for example, has some legal obligation to provide policing. They do not have a similar obligation to provide fire protection. I am not quite sure why this is, but it is true.

It is also true that you could say, for example, that this process and information system is going to work well when there is a sophisticated network in place, a fire department like Metropolitan Toronto. Wonderful. If the trucks only came through Metropolitan Toronto with its sophisticated fire department and response system, we would have no problem here.

The problem is that they also go through places like Richmond township,



which has a volunteer fire department. So you can say, "I've got all this information available and it is all on computer," but there are many townships through which trains travel, trucks travel, where industries are located, which have no fire department, let alone an information system or a response system.

It is fine to say we will have a fire in a plant in Stoney Creek and therefore Hamilton will get all interested in this and respond with its resources. But are we really saying: "Well, we will have one in Stoney Creek and they will get set up to handle it. We will have another one in Mississauga and they will get set up to handle it. When it hits Richmond township, then they will do it"? That is surely not what we intend here.

I have just been looking at where the holes in this system really are.

Dr. McCalla: I am far from knowledgeable but in terms of some press accounts of chemical spills, I have been impressed by the Ministry of the Environment's ability to respond and get help to small municipalities in terms of, "Is it a hazard and how should we clean it up?" and so on.

I think that is really the only solution for the smaller municipalities. There is no way a unit could do this in-house in Fraser township, where I have a country place, and be cost-effective. There are 3,000 people in the township. We have to have response teams that can go out and deal intelligently with these issues.

One other important source of information I should have mentioned is the Canadian Centre for Occupational Health and Safety, again located in Hamilton. This is a federal department. They have developed a tremendous amount of on-line MSDS kind of information. They will respond to questions, give information. They are in danger of being overwhelmed, but there has been a tremendous amount of information gathered there and available. They are also in the process of producing a lot of safety information on compact disc for a fairly reasonable price, so that many libraries will acquire them and they should be readily available.

Mr. Breaugh: My analysis of this system is that what we have is a framework with considerable potential, but not to overestimate it, there is not much more than that there. This could get developed into something which is really worth while, but there are many holes in this system that have to be filled in. There are gaps that have to be addressed.

The potential to do good is there, but I am reminded constantly that more than a decade ago I stumbled across the problem that transport trucks have no labelling. They still do not have any labelling, and the reason they do not is that our federal government and everybody else cannot figure out a set of international symbols for this stuff. They have not been able to do that in 20 years and the trucks are still rolling. That bothers me.

Mr. Jackson: We are the only province that does not have that.

Mr. Breaugh: That is true.

Dr. McCalla: We really are a bit away from occupational health.

Mr. Breaugh: Except if you are the fireman who answers when the 18-wheeler rolls over, it sure as hell looks like your occupational health and safety to you.

Dr. McCalla: Yes, I agree with that.

Mrs. Marland: Just on that last comment, speaking as a resident of Mississauga in 1979 when we had our famous train derailment, I think my colleague Mr. Breaugh's comments are well made. In fact, when you get into that kind of situation, it is not only the fire department and the police department experiencing occupational health hazards and therefore their safety is at risk.

As a result of the train derailment in 1979, we do have a federal bill, C-18, I think it is, which deals with the transportation of hazardous goods. We have made some progress in that area, nationally and provincially. It still is far from perfection, as you have well stated, but it certainly is something this council would have to be interested in, because if it is not even your daily occupation in an emergency situation, it certainly is your occupation and your occupation at risk.

Mr. Chairman: I want to take this opportunity to thank you, Dr. McCalla, Virginia Biggar and Dr. Chan, for coming and appearing before the standing committee on government agencies to review your positions and the Advisory Council on Occupational Health and Occupational Safety. It has been a delight to receive the information from you, and we will be deliberating and we will have a report finalized in the very near future.

Committee, we will be dealing at two o'clock this afternoon with research with regard to the Ontario Waste Management Corp. which we will be reviewing tomorrow morning at 10 a.m. and also on Thursday. The next two days will be the Ontario Waste Management Corp. This afternoon at two o'clock be here for at least an hour's briefing on that.

Mr. Breaugh: I just want to point out that I have to go to the Association of the Municipalities of Ontario for some wonderful announcement by some minister. I may have a little difficulty getting back precisely at two. If it is your intention to meet for an hour or so, perhaps you could convene at 2:30.

Mr. Chairman: If it causes you problems, we could make it 2:15, if that would be all right.

Mr. Breaugh: All right.

Mr. Chairman: We will make it 2:15 then. Dr. McCalla, did you have a question?

Dr. McCalla: Yes, I was simply going to ask a question in the spirit of freedom of information. I am sure members of council will be very interested in a number of the questions which have been asked, points of view outlined. I presume I am free to share that with them, even before your report comes out?

Mr. Chairman: Absolutely.

Dr. McCalla: We will be very interested to see your follow-up reports on a number of things, including the public participation, freedom of information and so on. I found it a stimulating session.

Mr. Chairman: Thank you very much.

The committee recessed at 12:04 p.m.



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO WASTE MANAGEMENT CORP.

WEDNESDAY, AUGUST 24, 1988 .

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

Black, Kenneth H. (Muskoka-Georgian Bay L)

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Martel, Shelley (Sudbury East NDP)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Furlong

Fleet, David (High Park-Swansea L) for Mr. South

LeBourdais, Linda (Etobicoke West L) for Mr. Black

Marland, Margaret (Mississauga South PC) for Mr. Runciman

Also taking part:

Faubert, Frank (Scarborough-Ellesmere L)

Clerk: Deller, Deborah

Clerk pro tem: Arnott, Douglas

Staff:

Yeager, Lewis, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Waste Management Corp.:

Chant, Dr. Donald A., Chairman and President

Scott, Michael G., Director of Communications



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, August 24, 1988

The committee met at 10:06 a.m. in room 151.

AGENCY REVIEW  
(continued)

Mr. Chairman: I call the committee to order. We have with us Dr. Chant from the Ontario Waste Management Corp. Dr. Chant, perhaps you could introduce the colleagues you have with you today so that it will be on the record.

ONTARIO WASTE MANAGEMENT CORP.

Dr. Chant: On my far right is Susan Austin, who is my executive assistant. Next to Susan is Lorne Bentley, who is our director of administration and finance, and on my left is Michael Scott, who is our director of communications.

Mr. Chairman: Thank you. I presume that you have an opening statement and we could proceed with that at this time.

Dr. Chant: Yes, I do. As the chairman has indicated, my name is Don Chant. I am chairman and president of the Ontario Waste Management Corp., and I have already introduced the staff from the corporation who are with me this morning.

I have a brief opening statement for the committee which summarizes OWMC's role, its history and our present structure and program areas.

As committee members will know, OWMC was created by the Ontario Waste Management Corporation Act in July 1981 and is designated as a schedule II operational crown corporation in the Ontario Manual of Administration. Although eventually we will be self-funding, we currently receive funds from the consolidated revenue fund and our annual budget requirements are included in the estimates of the Ministry of the Environment.

OWMC's primary responsibilities are to design, construct and operate a province-wide system for the treatment and disposal of Ontario's industrial wastes and to develop a long-term program to assist in the reduction and recycling of these wastes. Our immediate objective is to obtain all necessary approvals for the construction and operation of a world-class industrial waste treatment plant.

Frequently, I think, the public confuses this role with responsibility for managing all types of waste produced in the province. I think it is important to emphasize that we have no responsibility for managing domestic garbage or municipal waste, which is the responsibility of the Ministry of the Environment and municipalities across the province; nor are we a policeman. We have no authority whatsoever to apply and administer the laws of the province or to act as a policeman with respect to waste management issues. In fact, our plant will be regulated by the Ministry of the Environment and we must obtain all necessary approvals before that plant can be constructed.

Finally, we have no responsibility for nuclear waste management, which is a federal responsibility.

In terms of our history, I think it would be helpful to give you a brief sketch of the reasons the Ontario Waste Management Corp. was formed and the approach we are taking towards helping the province solve its industrial waste problems.

In the 1970s, it became apparent in Ontario that these problems of industrial waste were not simply going to go away. We could no longer ignore the mounting evidence of widespread industrial waste contamination, particularly in the Great Lakes system and Lake Ontario in particular, which millions of people in this province rely on for their drinking water, domestic water supplies.

During this period, the province tried to encourage the private sector to build modern industrial waste treatment facilities. These efforts failed—uniformly failed—primarily because of strong public opposition, the use of local bylaws to defeat private sector initiatives, the reluctance of the private sector itself to provide the full range of waste treatment technologies we need in this province, and the enormously high cost of public hearings and approval processes—to name just a few of the reasons.

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In 1981, recognizing the urgent need for a solution, the government established a crown agency to do the job. That is how the Ontario Waste Management Corp. was born. Our first order of business was to look at a site near South Cayuga in the regional municipality of Haldimand-Norfolk. The site was on crown-owned land where the government of the day felt the facility should be built. Before I was willing to accept the position as chairman and president of the corporation, I indicated to then Premier Davis that I felt the corporation should hire its own consultants to study the site the government had chosen to determine its suitability before proceeding any further. I also felt that if the site was suitable, OWMC should be required to present its proposals to an independent hearing panel where everyone would have an opportunity to test its case.

Even though the government at that time indicated the project would be exempt from the Environmental Assessment Act, I felt the onus should be on the corporation to prove its case before an independent hearing panel vested with the authority to reject our proposals if they found them deficient.

The Premier agreed to these conditions, and created an independent hearing panel called the Hearing Panel on Industrial Waste Management. A year later, our investigations of the South Cayuga site indicated it had some serious hydrogeological flaws, which meant it could not provide the secure environmental conditions we felt were essential for the safe operation of the facility. We announced the rejection of that site in November 1981 and indicated we would be proceeding to select another site and submit our proposals to the hearing panel as soon as possible.

With this decision behind us, we began a three-and-a-half-year site selection process that I believe has been the most comprehensive program of its kind ever undertaken in North America—and incidentally, one of the shortest. I am sure, Mr. Chairman, some of your members will want to talk about the timetable.



In narrowing our search from all of Ontario to a single site, many difficult issues had to be resolved and many tradeoffs had to be analysed and weighed. In all, we considered more than 150 different factors throughout the process of finding a site. We gradually narrowed our search from all of Ontario to 152 possible sites within the Golden Horseshoe region, where most of the industrial wastes we expect to treat come from. Within the Golden Horseshoe, we identified eight candidate sites which we announced in March 1984. In September 1985, following more detailed studies on and near each of these sites, including extensive drilling programs, we narrowed the search down to a preferred site in the township of West Lincoln, which is south of Lake Ontario and about 40 kilometres from Niagara Falls.

I believe it is important to note at this point, that prior to the announcement of this site, the present government decided in July 1985 to place this project under the full provisions of the Environmental Assessment Act, thus abolishing the specially appointed hearing panel the previous government had appointed. Because we had been utilizing the same broad definition of the environment contained in the act, this did not affect our decision to select the West Lincoln site, although it did mean that formal public hearings on our proposals would now be conducted before a joint board consisting of members of the Environmental Assessment Board and the Ontario Municipal Board. I agreed with this decision wholeheartedly, even though it initially lengthened the process of developing our treatment plant.

Since the announcement of the West Lincoln site in 1985, we conducted further, more complex and detailed studies and investigations on and around the site to confirm that it is indeed a safe and suitable location for our proposed facility. In February of this year, we submitted a six-volume draft environmental assessment to the Ministry of the Environment and other government ministries and agencies for their review. We have just now received their comments and will be submitting our final environmental assessment to the Minister of the Environment this fall.

Following the ministry's final review of this material—the final draft—formal public hearings will then be held which we hope can begin in early 1989. These hearings will probably be the largest and most complex environmental assessment hearings ever held in Ontario. We are expecting that they could take at least a year to complete. We can have the plant operational approximately 18 months after final approval from cabinet has been received, assuming always that cabinet does approve our proposal.

As you can see, we are at least two to three years away from the opening of this facility. This raises the obvious question of what Ontario Waste Management Corp. can and should be doing in the meantime to help alleviate the industrial waste problem in this province and I want to turn to that question in a minute.

Before I do, however, I should briefly describe for you the facility we are proposing to build in West Lincoln. We will be utilizing the world's best proven technologies—and I emphasize proven technologies—in this facility. It will include a physical-chemical treatment plant to detoxify all types of inorganic industrial waste, which is about two thirds of the waste produced in this province, a high temperature rotary kiln incineration system to destroy the organic waste, a solidification plant where the treated detoxified waste residues from the other components will be mixed with cement and other reagents and an engineered landfill on deep, impermeable clay soils where the mixture of treated residues and cement will form a large concrete-like mass.

The facility will have an initial treatment capacity of 150,000 tonnes per year with a potential to expand to 300,000 tonnes per year if necessary. The capital costs of this facility, including all other ancillary components such as storage tanks, truck-washing facilities, an office complex and laboratory will be about \$300 million, in 1987 dollars.

We will be charging our customers for our services. Our objective is to run a self-sustaining operation to recover the plant's capital costs so that the facility will not be a continuing burden on the Ontario taxpayer.

Turning now to some of our other activities, we have developed programs in the areas of waste reduction and recycling services and technical laboratory services to waste generators in our efforts to help alleviate some of our present toxic waste problems.

We have a full-time manager of waste reduction who has a staff of three professionals. Recently, they published an Industrial Waste Audit and Reduction Manual, a step-by-step guide for small- and medium-size businesses, and this, within the circle of industrial waste specialists, has become a best seller. More than 400 copies were ordered in the first three months of publication.

We are conducting a series of waste audit and reduction seminars across Ontario to assist small plant operators, in particular, in identifying ways that they can reduce and resolve their waste within their own plants.

We circulate a waste reduction newsletter to approximately 13,000 industrial waste generators in the province. Our professional staff of four are out every day, all day, visiting plant managers, reviewing the production processes and giving them advice on how they can reduce the amounts of industrial waste they are producing.

Finally, OWMC and the Ministry of the Environment jointly fund the Ontario Waste Exchange which brings together generators and users or potential users of industrial waste.

Throughout the entire process of selecting a site for our facility and developing other programs for the private sector, we have consulted regularly with industry, special interest groups and local residents. We have met with more than 1,000 groups and individuals over the past year alone and many more times that in the years that we have been engaged in this program, often in their own homes.

We have conducted information seminars in every major city of Ontario on the issue of industrial waste management. We have had an information office in Smithville with a staff of three near our preferred site for the facility for almost three years to ensure the residents of that area are consulted regularly.

Needless to say, we have not been the most popular visitors in some locations, particularly in West Lincoln. It has been an exhaustive, demanding and at times very frustrating process. Often I am asked if there is not any easier, faster way to get this job done, which most people in Ontario agree simply has to be done.

I do not see any shortcuts around the Environmental Assessment Act; a very demanding and comprehensive piece of legislation as it should be. We have to do it right this time. If we fail, Ontario will not have a full service



modern treatment facility for industrial waste for a very long time to come, in my opinion. And I believe that such a facility simply cannot be sited successfully anywhere in North America without conducting a thorough, open and demanding process. That is exactly what we are attempting to do.

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I hope this background information is helpful to the committee. I would like to conclude with some brief comments on our internal structure and management practices, which I know are of considerable interest to your committee.

As stipulated in our act, we are governed by a board of directors, which currently consists of eight members, including myself, appointed by cabinet for three-year terms. As indicated in the background material provided to committee members, the board meets an average of seven times a year. The corporation is managed on a day-to-day basis by myself and four senior managers: Lorne Bentley, on my right, as I indicated, is our administration and finance director; Dick Griffiths is our project operations director; Bill Lightowlers is our marketing director; and Michael Scott, on my left, is our communications director.

As a schedule 2 agency, we are responsible for establishing and administering our own internal personnel, administrative and financial accounting procedures, which must be in accordance with policies outlined in our memorandum of understanding with the ministry. Lorne Bentley was responsible for the development of our own detailed manual of administration, which he will be pleased to describe to members of the committee if you should wish. Also included in the background material are copies of the memorandum of understanding that have been signed with the ministry over the past three years, three versions of them.

As you will see, we have signed three memoranda, the most recent dated October 21, 1986. The memoranda describe in detail our reporting relationships to the ministry and stipulate in particular that our annual budget must be submitted to the minister through the deputy minister in time for inclusion in the ministry's annual estimates.

I have met with the standing committee on resources development on three separate occasions to discuss our estimates in more detail. Each year our minister is required to table OWMC's annual report in the Legislature. As well, we have met with the leader, the Environment critic and members of caucus of the opposition parties to ensure that they have had an opportunity to explore issues with us in more detail.

I hope these comments have been helpful, and we are certainly at your disposal to answer any questions that you may have.

Mr. Chairman: Thank you very much, Dr. Chant. I am sure the committee will have several questions.

I have a couple I just wanted to start off with. You indicated that your environmental assessment hearings with regard to the West Lincoln site will start in 1989 and will take approximately a year. What happens if in early 1990 your hearings indicate to you that this site is not suitable for some reason? What would you do then?

Dr. Chant: I would resign. But apart from that, I assume that the

government would have to decide whether it wanted to proceed, to continue on with this initiative to provide industrial waste treatment facilities for the province or perhaps explore some alternative approach. I think the point I am making is that I would consider at that time that it was no longer part of my responsibility. I would have failed in my role at OWMC and I think I would leave it to somebody else to pick up the pieces.

Mr. Chairman: Really what you are saying is that you are sure that the environmental assessment hearings will be satisfactory. However, why spend a year going through them? Why would it take a year to do them if you feel as sure as you do that there would be no problem with the site?

Dr. Chant: We do not control that process. We are subject to the Environmental Assessment Act and we are at the disposal of the Environmental Assessment Board—the consolidated hearings board, actually, under the Consolidated Hearings Act. The hearings will last as long as the board members, the hearing panel members, quite independently of us, feel that there are legitimate issues to be explored.

I happen to support that process. As I indicated earlier, it is laborious, it is frustrating, it is expensive. But, in a way, it is like democracy: It has its flaws, but nobody can think of a better system.

I do not want to suggest in any way by my earlier answer that I am assuming that we will get a rubber stamp from the hearing panel. I think it is quite possible that there will be conditions laid down on us that either have not occurred to us or that the panel feels have a higher priority than we may have given them. There will probably be some redesign of the basic engineering to meet some of those conditions and methods of operation.

I think I can say quite sincerely that I suspect and I do expect that we will have the plant approved, with conditions, but I think the conditions will ensure that it is even a better operation than we have been able to design to this point, so I look on it in quite a positive way.

Of course, cabinet ultimately has to receive the report of the hearing panel, make its own judgement, receive appeals at that time, which will add to the timetable and finally give us the approval, I hope, to proceed with this project.

Mr. Chairman: The other question I have is that you indicate it would cost \$300 million in 1987 dollars. What do you estimate the cost would be by 1990 or 1991?

Dr. Chant: Well, you will have to add the cost of inflation and the cost of any additional engineering or technology that might be laid down as a condition of the hearing process, and I think that is pretty difficult to estimate, but if you assumed an inflation rate of five per cent over three or four years, then obviously that figure would increase.

I have to emphasize that is the capital cost estimate that stems from the preliminary engineering design work we have done with Monenco in St. Catharines. That has not been approved by the government and presumably will not be approved until the hearing process has run its course.

Mr. Chairman: What is the advantage of one major facility in central Ontario or western Ontario, rather than perhaps two or three smaller ones in Ontario?



Dr. Chant: There are a number of advantages. First of all, the majority of industrial wastes are produced in and around the Golden Horseshoe, which is our concentration of industrialization, as we all know. There are substantial economies of scale in building a centralized treatment plant. If we had to duplicate all the treatment capabilities of the central plant in a number of regional plants, the cost would be four or five times the capital estimate I have given you. I think also there are real advantages in having a uniform, unified administration and particularly environmental monitoring program, so that we know the facility is receiving that central attention, care and concern that might be harder to accomplish with regional facilities.

Having said that, though, I think that as time goes by, and assuming that this plant is built, there will be ancillary plants that are built for specialized purposes in other parts of the province, perhaps, transfer and pretreatment centres around the province that will feed the treatment and disposal system.

This is a beginning, in my view; a big beginning. We cannot have in this province a modern system for dealing with industrial waste, in my view, without such a plant, but the plant itself is not sufficient to meet the entire needs of the province. There is a role for the private sector. There is an expanding role for recycling and recovering and waste reduction, and I think the transportation system over the years ahead, and I am looking ahead a decade or two now, will have to have regional transfer and collection systems to feed the system effectively. So this is a beginning; a big beginning, but a beginning.

Mr. Chairman: What do you expect the life extent of this facility will be?

Dr. Chant: The lifetime of the landfill, which is a sheer acreage phenomenon, is about 30 years. There is no effective lifetime on the treatment plant itself. It can always be updated and new technologies added. It could run forever, but the 30-year lifetime tied to the landfill is the one we are planning. If it went beyond that, we would either have to find another landfill or relocate the plant.

Mr. Chairman: My last question is, what is the cost to date for the establishment and the work that has been done to find that site and to establish it?

Dr. Chant: The total budget expenditures of the OWMC since 1981 are \$69 million. Not all of that has been devoted to the site selection process and the engineering design process, but a large part of it has. However, it has been necessary to create the corporation from the ground up and there have been certain costs entailed in that, but \$69 million is the figure.

We allocate \$30 million of that to site selection and the testing of all of these sites. The drilling programs on eight sites, the socioeconomic work, all of the biological and environmental work, the atmospheric work and so on is about \$30 million. The preliminary engineering design, which is the counterpart of that from the technical point of view, is about \$15 million.

So \$45 million, you could say, roughly, is facilities oriented in that \$69-million figure. The rest is the cost of creating a corporation, staffing a corporation and all the other administrative and control activities, monitoring activities that we have been engaged in.

Mr. Chairman: With regard to the funding, will there be intervenor funding provided for groups or organizations?

Dr. Chant: Yes, it has been over a number of years, to a total right at this moment, August 24, 1988, slightly in excess of \$2 million. It has had several components. One is a funding program to citizens' groups which have been following this project with great concern. We have had a separate system of receiving proposals and allocating proposals. Then we provided substantial direct funding to the region of Niagara and especially to the township of West Lincoln.

The township of West Lincoln is a small community. It is about 9,800 people. It is the largest in area in the peninsula but the smallest in population of the components of the regional municipality with a very limited tax base and very limited resources. So we have had those two programs—one to the local elected officials and the governments that they represent, in the region and the township, and one to citizen groups. With that, Mr. Chairman, and your indulgence, I would ask Mr. Scott who has been responsible for administering those funding programs to comment in a little more detail.

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Mr. Scott: Before I go back to your question, the funding for the hearings will be provided under a specially appointed funding panel that has been created by the Environmental Assessment Board. Cabinet recently issued an order in council creating that panel.

It is chaired by Mary Munro who is a member of the Environmental Assessment Board. Her responsibility will be to receive applications and award funds for participants during the hearings. Our funding must end to participants when we submit our final environmental assessment. So our funding program will continue to run over the next matter of weeks until we have concluded our work on the environmental assessment.

The funding program that was directed towards citizens and interest groups was conducted by John W. Beaver. He was what we called a funding adjudicator. He was appointed by a search committee we created, consisting of Pauline McGibbon, former Lieutenant Governor, and Donald Rickerd, president of the Donner Canadian Foundation. They selected Mr. Beaver as the funding adjudicator. He awarded just in excess of \$280,000 to various special interest groups and individuals for the review of our technical reports.

The township of West Lincoln has also received funding directly from us, rather than going through Mr. Beaver. To date it has received about \$760,000 of funding from us. The region of Niagara has also received funding from us for conducting their own review. They to date have received about \$420,000 to the end of March 31, 1988.

That, in a nutshell, describes the program's two basic components, the Beaver program for citizens and groups and individuals, and direct funding to the township of West Lincoln and the region of Niagara. This will end when we submit our final environmental assessment. It will be picked up by the Environmental Assessment Board's funding panel at that point.

Dr. Chant: I think it is worth pointing out that whenever we give funds under either of those programs, the one to the citizens' groups through Mr. Beaver or directly to the region or township, there is a contractual relationship. They have to make a proposal, which we vet for its relevance to



our project, its expertise and the hope of getting something useful from it.

A contract is developed. Those receiving the money are obliged to live up to certain conditions with respect to how they engage their own consultants using the same processes that the government uses, tenders and so on. They have to commit themselves to submitting a final report which has to be made public to all parties, including ourselves, of course, and so on.

So I have been satisfied myself that there is a good control system, provided that one accepts the principle of providing funds in the first place, which I do. I know that is debatable, but I think the administration and the financial control under Mr. Bentley's responsibility has been very effective.

Mr. Chairman: Who set those guidelines?

Dr. Chant: We set the guidelines.

Mr. Chairman: Your board?

Dr. Chant: Our board approved them. We put together a set of guidelines. There are not too many precedents in Canada. There are three that we looked at particularly. One was the hearings conducted in the Mackenzie Valley some ten years ago by Mr. Justice Berger, in which he was the first in Canada to provide funds for public intervention. The federal government has programs for this, especially in their northern environmental assessment hearings in native communities and so on.

Dr. Arthur Porter, in his royal commission inquiry into energy and electrical demands in the province, also provided intervenor funds. We looked at all of those models. I think we have a more rigorous system in the sense that it does oblige those receiving money to provide us with a final report, as I said, and all the other parties as well. So we developed it, ultimately, from these models; our own board approved it, the government approved it and each expenditure is approved by the deputy minister over this period of three years now of providing these funds.

Mr. Breaugh: I think many of us will have a number of very specific questions, but I would like to start this morning by keeping to the general.

I guess it is fair to say that many of us who would advocate the need for this facility are somewhat puzzled by the process whereby we are getting there. Probably by the time the facility is in place it will have taken better than a decade to get the approvals done. We do not quite know exactly how much cost is involved, but it is getting up there, and I do not think it is unfair to say that perhaps, by the time this thing is operational and self-supporting, pretty close to \$1 billion will have gone through the process in one form or another. Now, no one knows the exact numbers that will be involved there, and we will not until the facility is operational.

I would like you to comment a little bit on this, because it does strike me that something went wrong somewhere. In this process now for about a decade we will have had a high level of activity among consultants and the auditor. One standing committee has taken a shot at trying to sort out whether that was appropriate and the best way to go.

But when you add it all up, the fact remains that it will take more than a decade to put this facility on stream at substantial public expenditure, whatever the number might be. We have yet to provide treatment for the first

problem unit of disposal that might go through that plant. So it takes a long time; it is a very expensive process. I am sure for you it is a very aggravating process.

Is there any way to go about this other than the model that has been used in Ontario?

Dr. Chant: That is a very good question indeed and, I am sure, central in many people's minds.

Let me just comment on your statistic to begin with and then try to give you an answer. I do not think it will be \$1 billion. Nobody does know. My guess is that by the time the plant is built, let's say a \$300-million plant in 1987 dollars, probably \$100 million in developmental costs, creating the corporation, all the work that has been done, so we are probably looking at \$400 million, which is an enormous amount of money. I am not denigrating that.

Mr. Breaugh: Let me just stop you there. The only reason I throw that number in is that I live next door to Darlington, and I remember when that facility started off at being maybe \$3 billion, maybe \$4 billion, and now we are talking \$10 billion, maybe \$12 billion.

Dr. Chant: I think, with respect, there is a major difference. One is that Darlington and any nuclear development in Canada has been very much on the forefront of technology, not using proven technology but proving it as they go along and doing an enormous amount of research.

The technology we are using is not mysterious or particularly sophisticated. There are five or six of these plants in western Europe. One of them has been operating for 15 years north of Munich. The technology is very straightforward, and the proven aspect of it makes it even more straightforward. We are not gambling that our technology will work, because we decided very early on that we would not use anything that has not been proven somewhere else by at least one year in commercial operation. That is our definition of "proven." But the fact is, and I do not argue with it, that nobody knows what the bottom line will be when this process finally runs its exhaustive course.

Here are a couple of statistics that may help put this in perspective. Alberta opened a little plant at about \$60 million last fall in Swan Hills, about 200 kilometres north of Edmonton, for their highly specialized industrial waste in that province. They do not have nearly the rate that we have. It is mostly petrochemical waste that they have to deal with. It took them from 12 to 14 years to establish that plant with no environmental hearings whatsoever; they do not have environmental hearings in Alberta. So you are looking at a very lengthy process no matter what you do. A new highway extension in this province takes upwards of 15 years, from the Ministry of Transportation saying, "We have to have a new highway because of our traffic projections" to actually having a new highway. We have been at this now for seven years, and if we get approval within 10 years, we will be the fastest in the world, I guarantee you.

I think the answer to your question has two major components. One is that there were two false starts in this project. I do not think anybody should apologize for those; I think they were done with the very best motives at the time. But the first false start was in the government of the day choosing South Cayuga on the basis of a \$400,000 site-selection process. It was done in good conscience, with professional credibility and integrity, but



you get what you pay for and the notion today of trying to find a site for anything for \$400,000, given the public sensitivity and so on, is absurd.

So they chose South Cayuga after a year and a half of looking at sites around Ontario, mostly crown land, and then we spent the first 10 months of our life as Ontario Waste Management Corp. not only creating a corporation but doing the studies on South Cayuga which show that there it sits on a flood plain on the banks of the Grand River, for heaven's sake. It is not a suitable site. We turned it down and had to start all over again. So there was a year gone, essentially, in disposing of a bad choice.

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I emphasize again that I am not being critical. I know Dr. Parrott urgently felt this was the number one environmental problem in Ontario, that we have to do something about it, and he was willing to take shortcuts. With the benefit of hindsight, perhaps he should not have, but he did and I supported him at that time.

Second, the other false start is that we spent three years gearing up for a hearing process which was then substituted in 1985 by the full environmental assessment process. I think Mr. Bradley made the right decision. I talked to the Premier (Mr. Peterson) and I talked to him about it, and I endorsed that decision. I think that is the only way we can hope to have public acceptance of this controversial facility, to have it treated normally and rigorously and be given no favours by the ministry or government whatsoever, and that is the way it has been. But the cost of that was probably 18 months or two years. It was a cost well spent. Again, with the benefit of hindsight, we should have been under the act from the very beginning, but that did not happen. So two false starts, I think, have to be considered in response to your question.

Finally, I think it is widely recognized now around the world, by the environmental experts I talk to around the world, anyhow, that Ontario has the most rigorous Environmental Assessment Act anywhere in the world with the most rigorous and extensive provisions for hearings with full public participation and so on. I do not know how that hearing process and the environmental assessment process generally could be shortened and made more simple. Mr. Bradley set up a task force last spring, as you may know, to look into ways of expediting this process.

It is difficult for me to see at this stage how the environmental assessment requirements as they apply to us could be extended to the private sector. I think most people feel they should, but I do not think the private sector could operate under this. The idea of spending \$60 million in developing the plans for a facility is ludicrous in the private sector. They just look at this as you suggested, with bemusement and puzzlement: "What's going on here? Why is it taking so long for something everybody says we have to have?"

But how much can you throw out the baby with the bath water? How much can you compromise the requirements of the Environmental Assessment Act for a project which is seen by most people as being an environmental benefit in Ontario, in contrast to other industrial activities which are seen as being an environmental threat, even though there are economic and employment benefits, and so on and so forth?

I do not have an easy answer to your question. I hope that when we are

finished with what I see as an environmentally beneficent project, very much in the interest of people in the province, we could all collectively look back on the 10 years, or whatever it is, and ask, "Given the two false starts, how could it have been done more quickly?" Perhaps we can improve the process as we move along.

Again, as I indicated to the chairman, it is common rubric to say there are a lot of faults in democracy, but nobody can think of a better way of doing it. I think there is a very strong element of that in the correct context.

Mr. Breaugh: One of the other general concerns which is shared, I think, by many members here is that in the meantime this facility which was deemed to be absolutely essential several years ago is not in operation. We are worried somewhat that although visibly you can see that there is more attention being paid to a sensitivity to the environment, there is more attention being paid to what exactly is used in industry this day and how those waste products are disposed of, most of the members of the assembly would be able to recite for you an on-the-ground incident in their area of something that went wrong, of a plan for the disposal of industrial wastes that looked very good but did not operate particularly well.

I guess, to put it in an unpleasant form, the biggest single thing is that at the end of this process, we may not have changed our day-by-day operations very much and we will wind up with a facility that has already been used somewhere else in the world for some substantial period of time, so that we do not have dangling out before us there the great hope that we have found the breakthrough that will solve all of this.

What we are looking for at the end of this process is that basically we will have a facility like other places already have now. It will be somewhat larger, but to tell you the truth, as I look through the briefing notes on this material, this stuff is still going to be rolling around on the roads in Ontario, which is now a major problem.

I am not sure we have resolved all the difficulties in terms of on-site production of waste. Do we know what actually is going on inside the plants now? Some would argue that we do. I would argue that we certainly know more now—there is certainly more public information than there was a decade ago—but as one who talks to people who actually work there, as many members of the assembly do, I simply note there is a difference between what appears on paper in the published reports I get and what I am told verbally by those who actually work in the factory. I think we are pulling the two levels together somewhat, but they have not quite met yet.

I have all this anxiety—that is what I am trying to put out here this morning—that we may have spent a great deal of money and we may have delayed this process for a lengthy period of time, and I am not quite sure that we have resolved in the interim some very serious problems. Yesterday, we were discussing PCBs and spills and all of that, which is something almost anybody on the street can now talk about, and what happens when there is a transformer that falls off a truck and how you resolve that.

I can give you, as most members can, a response based on staff reports we have seen, reports that are tabled before various committees, reports from the Ministry of the Environment. When you get right down to it, they do not treat that incident much differently now than they did several years ago, except they tend to write stuff down on paper more than they did then.



My concerns are basically this: why do we go through this extensive process? Are we going to hell in a handbasket? Maybe by the time we actually get this facility built, it really will not matter because the problem will have got much larger, and the facility proposed that would have been great a decade ago will be insignificant by the time it is actually working.

Dr. Chant: I guess the bottom line is what is the alternative, which goes back to your original line of discussion. If we had not been subject to the rigorous requirements of the Environmental Assessment Act in all the work we are trying to do, I think there would have been a significant chance of making a mistake, of choosing the wrong technology or not having all the safeguards for air emission controls, to avoid farm fires and things of that nature. I think I can say that with the best will in the world, the scrutiny we have been subjected to and will be subjected to will improve the final product. I do not think there is any doubt about that at all, and I openly admit it.

Our plant will not be larger than plants in western Europe. There are some around Frankfurt, for example, in the highly industrialized Ruhr Valley and so on that are considerably larger than we are proposing. I am not suggesting we are modelling our technology on the 15-year-old plant north of Munich, which I referred to. Yes, they have a physical chemical treatment; yes, they have a landfill; yes they have a rotary kiln. They have two rotary kilns, actually. But there have been many advances in the designs of those basic pieces of equipment that have gone on over the last 15 years.

Our incineration design consultant is Von Roll, based in Zurich, the best in the world. They have designed over 150 rotary kilns, not all for waste treatment; some of them are for other industrial processes, cement kilns and so on. The subconsultant to them is the management of a government-owned plant outside Frankfurt; HIM is the name of the company. It would be a crown corporation if they had a crown; it is a government-owned corporation.

Basically, a number of things are happening. There is more in-plant treatment and dealing with industrial wastes than there was 10 years ago or five years ago. It is partly public concern, partly the reaction of industry trying to do the right thing and very much partly the result of tightening regulations, tightening requirements and much more policing of the system being done by the Ministry of the Environment.

There are 16,000 industrial plants in Ontario producing industrial waste of one kind or another—a plant being defined, I think, as an establishment in excess of 25 employees, something like that—from dry-cleaning establishments and photographic development labs to the ones that always spring to mind, Dow, Polysar, Stelco and so on. It is a very complex system.

There is undoubtedly a great deal more emphasis on 4R—reduction, reuse, recycling and recovery—some of it generated by industry itself in self-interest. It is cheaper not to produce waste. It is cheaper to be able to sell your waste to somebody else who can use it in some productive way as an industrial resource; there is no question about that.

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You mentioned the transportation issue and whether we are any better equipped in this province to deal with a transformer full of PCBs falling off a truck on our highways than we were 10 years ago, and the answer is no, we are not, and we will not be until we have these treatment facilities. We have

no way in this province today of treating PCBs, especially high-level PCBs, and we will not have, in my opinion, until our rotary kiln is up, which is the standardized way around the world of dealing with high-level PCBs.

I think the situation is immeasurably better today than it was 10 years ago if for no other reason than public concern expressed over and over and over again. Ninety per cent of people in Ontario are concerned about industrial waste. That is more than the percentage of Torontonians who worry about the Toronto Blue Jays, more than the people who worry about free trade, unemployment, inflation and everything else. There is an extraordinary degree of public awareness and public concern.

Government has responded to that in my view, you folk have responded to that, slowly and sometimes with false starts, but if you look at the situation today and compare it to when I entered this scene, say, 15 years ago as the founding director of Pollution Probe, it is just dramatically different.

Yes, we are all frustrated. We know much more has to be done. It takes a long time and a lot of money, but at least we are doing it, I think. I do not mean us; I mean collectively, our society, the society we live in is doing it at long last.

Mr. Breaugh: I have one final, kind of general thing and then I know other members want to get into specifics. One of the things that bothers me—I know that in other jurisdictions this is the way it has been done—is that the private sector generates the problem and the public sector picks up the tab. I know this particular project is intended to eventually reverse that process, but that is still somewhere over the horizon and we continue to say that the private sector is quite free to generate waste products and the solution to what you do with that then becomes a public responsibility.

Is there any hope that at some point in time we could say to the public sector and to the private sector, "If you generate a waste byproduct that you can't sell, that you can't dispose of safely in a landfill site or something locally or that you can't handle internally"—those are kind of being my personal range of options of what to do with this stuff. Are we really saying to them, "You're going to assume the eventual responsibility for the cost, the total cost of a project such as this one."

In some way eventually, is this going to even out, so that you may anticipate that the public will handle the upfront costs and the aggravation of going through a decade or so of planning, public hearings and consulting on this, that and the other thing, but when that plant becomes operational and the corner has been turned, for the next decade the aggravation will shift to the private sector, where you will then pay the piper for the waste products you have produced and you will assume the costs of any future hearings that go on in that regard?

I cannot think of another area of doing business, if I can put it that way, where the private sector essentially assumes that the public has an obligation to pay for its endeavours. The only thing I can think of that comes even close is the post office. There are a number of people who seem to think that the publicly funded post office is there to allow them to make a profit, that it is certainly not a business expense. Somehow, we are supposed to subsidize everybody who wants to use that.

In a very real way and on a much larger scale, when we talk about industrial waste, the same phenomenon seems to creep in. The private sector is



quite free to build their plant as they see fit, to produce a product as they see fit, and as a byproduct of that, to produce waste products they do not want anything to do with. As soon as there is no profit in it, they then say: "This now becomes a public commodity. Garbage belongs to the public at large. While it's my right to make whatever profit I can out of my plant—that's the good old free enterprise system—as soon as I produce something that isn't worth anything, that then becomes the public's right. The public automatically assumes the right and the responsibility for the disposal of this waste."

There is a long way to go in this cycle before we get this project operational and before we say in reality that this is a business expense, that just as buying the raw material is a business expense and just as building the plant is a business expense, the disposal of the waste products is also a business expense. How many decades before we get to that point?

Dr. Chant: I think the industry which generates industrial waste accepts the bottom line right now. I do not mean they would leap at it with enthusiasm, but they know they are going to have to pay for this. That has not been an issue in the hundreds and hundreds of meetings we have had with industrial people.

The cost, when we are up and running, for the capital cost recovery under the terms which I think are in your briefing notes—20-year amortization with computed interest of five per cent and a break-even point in about our fourth or fifth year of operation when we come off total dependence on government subsidies—would be between \$300 and \$400 a tonne on average. Some of the wastes which are difficult to treat would be much higher than that and some would be lower.

That would be about one per cent to two per cent of industry's production cost, so it is worth measuring but it is not of terrible concern. No company has suggested it would move next to us to have cheaper waste treatment and disposal. They are much more interested in access to the airport, to major highways, to employment markets and things like that than they are in waste treatment.

I think it is fair to say, and I think we all realize, that we as citizens are going to pay in one way or another. If we pass the cost on to industry as we intend to, obviously the cost of the goods and services they provide to us will have to be adjusted to meet those costs of waste treatment, and we the consumer will pay.

I guess it boils down to this: would you rather pay it through taxes, which is a hidden way of doing it, or pay through true cost of goods and services? I prefer the latter without any question at all, because then at least you know what you are paying for. If you do not want to buy a product produced that includes the cost of waste treatment because you disapprove of it, then you do not have to do that as a consumer, whereas if it goes through the tax route, you and I do not have any discretion at all.

I like to think that the future is going to hold—once we have this plant and thereby have cards we can play in the game, we can look at joint ventures with the private sector. I really think that is the way to go. A couple of the government-owned companies in western Europe have private shareholders in addition to the government majority control, and I think that is an excellent model to look at. We are very actively looking at the opportunities in the future for joint ventures with the private sector.

I am uneasy about crown corporations. I think we are all uneasy about crown corporations.

Mr. Breaugh: Except for the Liquor Control Board of Ontario. We are all happy with it. A million dollars a day ain't bad.

Dr. Chant: We are uneasy about them, anyhow. Yet the private sector has shown it cannot bring itself to expose itself to the high upfront environmental assessment or approval costs and is not prepared to go into the high-tech, best of proven technology, where your margin of profit is probably much smaller than if you are using simple technology dealing with the less nasty waste factor.

The joint venture, I think, is an exciting concept, especially for crown corporations to get involved in. We have some interest in the private sector, in talking long-term opportunities for joint ventures.

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Mr. Velshi: I would like to switch to the cost of designing the equipment. Do you have a ballpark figure of what it has cost to date in preparing for the design of this treatment plant?

Dr. Chant: It is \$15 million.

Mr. Velshi: You mentioned earlier that a large portion of your costs has gone into the designing part of it. That is not a large portion. Why would you be spending money on that when the technology exists? I believe in 1986 you mentioned that you preferred the rotary kiln system, which is being used in Germany right now. If that technology exists, why are we still going into the designing of new equipment?

Dr. Chant: If we were building the plant tomorrow, the engineering designs, the blueprints would probably be a document about that high. Every pipe, every nut, every joint has to be designed. We are not at that stage yet. We are not into detailed engineering design, but a preliminary design is tailor-made for the site, for the exact waste quantities. This part is not always the same size as the same part in another plant and so on and so forth. In any high-tech industrial project, your engineering costs for design work run somewhere around 15 to 20 per cent, and that is what we will be looking at eventually.

In contrast, the \$15 million that we have spent—I think I indicated \$30 million on site selection, site testing and that sort of thing—is preliminary engineering design. We cannot go to the hearing process without showing them the preliminary engineering designs so that the hearing panel knows what we are talking about; what are the bells, what are the whistles, what does this thing actually do, and that is the justification for the \$15 million.

I mentioned earlier that we contracted through a normal tendering process and the Ministry of Industry, Trade and Technology was involved in that. We selected Monenco through its office in St. Catharines, which is a local firm, obviously, and they have been doing this design work for us.

Mr. Velshi: Dr. Barton is also developing something. How far along is he with that process of his now?

Dr. Chant: It depends whom you talk to. I have met with Dr. Barton a



number of times. Dr. Barton is at the Royal Military College in Kingston. He has a technology called plasma arc, which is a high-temperature, low-volume way of destroying liquid industrial waste. He has been developing this for some 12 or 14 years, I understand. It has yet to have even test commercial application. It has had certain test burns to measure it against the requirements of the air quality people in the ministry, but it has never yet been approved for a commercial application. There was some interest at Love Canal, which fell apart after two years of negotiation.

I think it is a promising technology. It is nothing new in industry. There have been plasma arc incinerators used in the metallurgical industry, for example, for 35 or 40 years. It has one serious limitation and that is it will only deal with purely liquid waste.

I meant to mention in reply to Mr. Breaugh's question that one thing we see happening with the new emphasis on the municipal-industrial strategy for abatement by the ministry on waste reduction and waste recycling is that the wastes are becoming less liquid. There is more dewatering going on in the industrial plants. The wastes are increasingly sludges and solids. That is probably the biggest thing that has happened in the characteristics of industrial waste in the past five years in this province.

The more that happens, the less Dr. Barton's plasma arc technology, which will only handle purely liquid material, will have a role to play. I do not mean that to sound pessimistic. I still think there is a narrow sector of the market where Dr. Barton's technology, if it is ever approved for commercial operation, has a role to play. I support it—I have said so to him and I have said so publicly—but it certainly is not the be-all and end-all. It will deal with the fringe waste and probably deal with it very well when he finally gets all the licences and permits he needs.

Mr. Velshi: Just a final question: I see you and your organization as a group that wants perfection. You want democratic assessment hearings and you also want state-of-the-art technology, but are you measuring that against the harm that is being done now to our lakes, to health and all that and trying to get a tradeoff somewhere in between where we can get going with the work rather than worrying too much about the democratic side and ignoring the other part of it?

Dr. Chant: Every hour of every day. I am an environmental scientist and I think I am perhaps more aware than many people are of the damage being done to our environment by our failure to this point—and I do not mean just in Ontario; I mean in North American generally—to come to grips with this problem.

I do not think we are doing any more than the law requires us to do. We have committed ourselves, for example, to having air emission cleansing devices for the kiln that will never exceed the regulations; generally, they run at about five per cent of the regulations. But proven technology permits that today, and could I really look the people of this province in the face and say that we did not use the best? I do not think I could. Now, if the government tells me, "You cannot use the best; it is too expensive," then we would have to look at that and tailor-make it to the circumstances.

But I emphasize again that we are not out in the sky blue yonder. We are not doing anything technically that somebody else has not already proven commercially. We are often criticized for not putting all our eggs in the plasma arc Dr. Barton basket or some other solution that somebody has

speculated on or dreamed up. We have not and we will not, unless those pie-in-the-sky ideas come down to practicality and prove their commercial operation, because that is really what we are all about.

Yes, I think there is a certain irony in that the environmental assessment requirements of this province are delaying an environmental benefit. They certainly were not intended to do that, but in our particular circumstance that is what is happening. Yet I do not see how we can back off that. Again I say "we" collectively, not just OWMC, because I support what the Environmental Assessment Act is trying to do to protect the environment of this province. We simply have to live up to its very strict requirements and go along with that, and we support it.

Mr. Chairman: I guess the point to be made is that there are about 43,500 tons shipped out of the province every year, about 35,000 to the United States and 10,000 to Quebec. Can you tell us where the location is in Quebec and where the locations are in Michigan and New York?

Dr. Chant: In Quebec it is one plant called Stablex Canada Inc. about 30 miles north of Montreal in a little town called Blainville. They simply take wastes and have some pretreatment and use this cement, lime and other reagents to turn it into a solidified mass, which they then put into a landfill. It can deal only with the inorganic wastes. You cannot use those solidification processes on the 30 per cent of the waste that is organic, including polychlorinated biphenyls. They do not have all of the upfront detoxification processes that we will have in our plant. I am going to overstate it: This is not quite correct, but they tend to take raw inorganic wastes, mix them with concrete, lime and other reagents and then put the solidified mass in a landfill.

It is a good operation. I have no criticisms to make of Stablex, but they do not go as far as we go. I think it is worth noting that Stablex can survive economically only by taking about 70 per cent of the wastes that they treat from the northeastern United States.

The Quebec government—and I know Mr. Lincoln personally, the new Quebec Minister of the Environment—is going to tighten regulations in the province. That will improve Stablex's business position and make it less dependent on imported wastes, but the fact is that, for the three years it has been in operation, it would have gone bankrupt if it had not been importing wastes from the United States.

The wastes that go out of Ontario other than to Stablex go to a variety of places. Most of them do go to Michigan, where they are incinerated. These are organic wastes that go to incineration in—I cannot remember the city in Michigan. Some of them go to New York; some go as far away as Arlington, Texas, where there is a rotary kiln. These are really nasty wastes that industry cannot dispose of legally in Ontario. They do not want to sit on them, waiting for us or somebody else to come along with a rotary kiln, so they find it worth while to ship these things to as far as Arlington, Texas, for disposal. They probably pay \$2,000 a ton for sending that material down, with a very high component of transportation costs.

Last year, as you are probably aware, Mr. Chairman, Ontario for the first time became a net importer of wastes. We have always, prior to this year, exported somewhat more than we received back again from industrial generators, primarily in the United States but also to some extent in Quebec. This year for the first time we imported more than we sent out collectively.



Most of it I think came in to Tricil in Sarnia, which has the only significant private sector waste treatment capacity in Ontario, and some of it came to our recycling industries that might be importing spent solvents or contaminated solvents and importing them really as a raw commodity for their own industrial operations.

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Mrs. Marland: I want to say at the outset that when I visited Dr. Barton's project in 1980, at that time—I do not recall the figures—his research was being supported and funded by the Ministry of the Environment to the greatest degree. I think that when we look at all the different experiments that have been going on and research throughout the province with a number of different waste materials and in particular, PCBs, we look at the wetox process and Smithville and so forth and so on.

I think that the thrust of the ministry has been a commitment to fund that research while it was making progress. I recognize it is not within your mandate or your purview to make a decision about when that progress is no longer being made, but it is something that I think this committee may well want to discuss with the ministry itself.

Dr. Chant: Could I just interject? As you are I am sure aware, about two or two and a half years ago, Dr. Barton did go commercial with the technology that he is trying to perfect and signed a contract with E. S. Fox engineering company in Niagara Falls.

I think at that time the general feeling of government granters to that program was that since he had industrialized it, they probably felt that that should take care of his needs. There was a lot of federal money that went into it as well in the early 1980s and late 1970s, as you probably know. I am sorry for interrupting.

Mrs. Marland: No, it is all right. Speaking for myself and my constituents, which is my only mandate at this committee, I must say that we are sitting here in 1988, seven years after the establishment of the Ontario Waste Management Corp., looking at an expenditure of \$69 million, close to \$70 million. We know that we are talking about what our reports tell us, that if everything proceeds as predicted for the next three years, this facility may be in operation in another three years, which will be about an 11-year project.

Listening to some of your answers already this morning, I must say that I am not convinced that the reality of what is going on here and has been going on for seven years is really on the table in front of us. I heard you say that there had been two false starts. I want to ask you about that because in reading my report it seems that with the South Cayuga site, you were established in July 1981. You rejected that site in November 1981. It only took you four months.

Dr. Chant: No, that is not correct. We were established in January 1981 by order in council. We immediately began working at the South Cayuga site at that time. So it took us 10 months to dispose of South Cayuga as well as create the corporation.

Mrs. Marland: My report says that you were formally established on July 2, 1981.

Dr. Chant: I was appointed and began hiring staff and getting an

office and so on, I think it was actually on December 3, 1980, by order in council, but my appointment was early in January 1981. We hired our hydrogeological consultants Gartner Lee to begin to do the testing of the South Cayuga site in March 1981.

Mrs. Marland: I am only going by my report. Maybe I could have a clarification on that, Mr. Chairman. My report says that it was formally established on July 2, 1981. Are we saying that the corporation received funding before it was formally established?

Mr. Chairman: I believe the order in council is in your binder.

Mrs. Marland: I am reading it from my binder.

Mr. Chairman: That is the information that we have.

Dr. Chant: There is a difference between the order in council that established under the Business Corporations Act, which was in December 1980, and the actual formal passing of the Ontario Waste Management Corporation Act by the Legislature in July 1981. The enabling document to permit my appointment and the recruitment of staff and the creation of the corporation, the hiring of our consultants to test South Cayuga, was in either December or January, whichever way you want to count it.

Mrs. Marland: Okay, so I guess Bill 90, which was the legislation that was passed by the Legislature, was what was passed in July 1981.

Dr. Chant: That is correct.

Mrs. Marland: I suppose then you received funding prior to it becoming enacted by the provincial government.

Dr. Chant: That is right.

Mrs. Marland: The provincial parliament, I should say.

Dr. Chant: That is right.

Mrs. Marland: In any case, looking back over seven years, that false start you referred to earlier in the answer to my colleague Mr. Velshi's excellent question had been an impediment to you.

The point I am wanting to raise with you is, how can you look back over seven years and say that the first five or six months, however you want to define that period in length of time, is now still regarded as an impediment? It was not as though it took you three years to reject that original site.

Dr. Chant: It took us a year, from January 1981 to November, and then to develop the program—

Mrs. Marland: Excuse me. With respect, Dr. Chant, is January to November a year?

Dr. Chant: Having turned down the South Cayuga site and developing plans for looking at all of Ontario for a new site, we implemented the new site selection program in January 1982, so it was exactly a year before we were able to embark on the new world we had entered when South Cayuga was rejected.



The fact remains, Mrs. Marland, if we had not rejected South Cayuga, if we had said we can live with a flood plain with underground gravel and sand seams on the banks of the Grand River, we would have a plan in operation today, but it would be a lousy plan.

Mrs. Marland: The fact remains also, Dr. Chant, that had you done that, had you accepted an unsuitable site, you would not have fulfilled your mandate, would you?

Dr. Chant: That is right, absolutely, and that is why we rejected it.

Mrs. Marland: So that is not an issue, I do not think.

Dr. Chant: All I am saying is that it took us a year to reject the site and embark on a proper site selection process for the whole province.

Mrs. Marland: Before I get to a specific question to do with finance, I really want to ask you up front, and it is a difficult question for you to answer because you are the chairman of this corporation and you have been for seven years, but if you were sitting on the outside looking in, as we are, as the public is, as my constituents are, would you not feel that it has all been a terrible mistake? Would you not feel that it is possible that this has been a dreadful nightmare where we have spent almost \$70 million of the taxpayers' money and we are still three years away from a solution that is still going to be costing the taxpayers money to operate once—and we do not know how much it is going to cost to operate?

Dr. Chant: As you—

Mrs. Marland: Let me just finish the question, because there are a lot of my constituents who are very knowledgeable on the subject of hazardous waste management and the problems and the challenges that involves. They have said to me that, in retrospect, we probably should have had the government establish regulations and given the job to the private sector, instead of what we have done. If the government had established regulations for operation, as it has done, for example, with mobile destruction facilities for PCBs, if the government had said to the private sector, "You develop the technology within our regulations," in seven years, and ultimately, as we know it will be, 11 years before we have something that is operational, would we not have been further ahead?

Dr. Chant: That is a pretty speculative question, Mrs. Marland. Let me try to answer in two ways.

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First, from 1972 to 1980, the government of the day very actively supported the private sector and tried to encourage it to do what we have been asked to do. There were two major projects at that time, as well as a number of subsidiary ones, each of which absolutely and utterly failed, for a whole variety of reasons. Dr. Parrott's primary concern was that the private sector could be stopped in its tracks by a local bylaw at any moment in the process. Witness what went on in Mississauga with a proposal to burn PCBs, nonorganic wastes, in the cement kiln. That was stopped by a local bylaw. The crown corporations, rightly or wrongly, are not subject to local bylaws, and that was very much Dr. Parrott's thinking when finally, in desperation, he said, "The private sector approach is not going to work," after eight years and a lot of money was spent on trying to follow that route.

Second, with great respect to your constituents, many of whom I know are knowledgeable, there is a great deal of oversimplistic thinking. Mobile is not the approach to dealing with all PCBs. I would not advocate a mobile incinerator for high-level PCBs, simply because a mobile incinerator cannot have all the air emission scrubbing and cleansing devices that a fixed facility can have. Mobile certainly has a role to play, but there are very few either/ors in terms of black and white with respect to alternatives in this business of waste treatment.

I think we have made good progress. I mentioned the false starts; I mentioned how long it took Alberta. For any industrial project of this size, whether or not it is subject to environmental assessment, and many of them are not, from the moment of inception, which was Dr. Parrott's order in council in December 1980, to actually commissioning the plant, whether it be a plastics plant or an automobile plant or a steel plant or whatever it is, 10, 12 or 15 years is very normal for this kind of process, with or without the kinds of controls we are subject to.

Subject to the two false starts I referred to, I think our progress has been good. We are all impatient about it, and Mrs. Marland, in our conversations over the years, I think you know that nobody is more impatient than I am. I want to see this job done, completed. This was not in my career path 10 years ago when I was thinking about what I would do as a professional zoologist, but I am darned well going to see it through.

Mrs. Marland: Dr. Chant, I have to tell you that a statement you have just made is not true.

Dr. Chant: What is that?

Mrs. Marland: You said Dr. Parrott drew the conclusion or made the decision that any municipal bylaw could stop the private sector operating, and you cited Mississauga as an example.

As the mover of the resolution and the mover of the bylaw in Mississauga that prohibited the burning of polychlorinated biphenyls at St. Lawrence Cement, and as the person who sat in court for three weeks with the Ministry of the Environment when the ministry appealed our bylaw, I know very well that although we won the decision at the first round, Mississauga's bylaw was struck down by a higher court, the Court of Appeal.

It was established very early in the game that a municipality could not pass bylaws to govern the environment. Therefore, once our bylaw had been struck down, any private sector project anywhere in the province had the open scope and challenge to go ahead within the regulations that existed then with the provincial Ministry of the Environment.

The provincial Ministry of the Environment, having the governing of the environment as its mandate and its jurisdiction, proved in three appeal hearings that no municipality could make the decisions about the operation of a plant within its jurisdiction.

I think it is very clear that, no matter what Dr. Parrott's comments were at the time, it took us actually about 14 months to lose our bylaw. Our bylaw was struck down. Then it was open season for anyone who wanted to do what St. Lawrence Cement had done.

The only reason that St. Lawrence Cement did not continue to burn PCBs



in 1979 was that in the meantime the provincial Ministry of the Environment had spent \$180,000 on a report called the Dillon report. The Dillon company was commissioned to study where PCBs could be safely stored and burned.

One of the three main recommendations of the Dillon report said that PCBs could be neither stored nor burned within three kilometres of a major body of water, within three kilometres of a major high-risk fire hazard such as an oil refinery or within three kilometres of a food processing plant.

St. Lawrence Cement is on the shores of Lake Ontario; it is 500 yards from an oil refinery, and it is 2,000 yards from a food processing plant. That is the only reason that St. Lawrence Cement and the Ministry of the Environment did not get into the business of burning PCBs. It was not that the private sector could not burn PCBs.

Dr. Chant: I think that is correct, without question. But I think Dr. Parrott's point—I am thinking back eight years, and he is not here—was that the very possibility of a 14-month process to overturn a local bylaw, which he felt was inevitable in any community, even though there was a precedent in Mississauga and other places, was an unthinkable impediment to private sector development which the private sector just was not willing to contemplate. That is what the private sector told him.

Mrs. Marland: The point is, though—not to belabour this discussion, Mr. Chairman, but it is an important point—the deterrent to the private sector, which I personally now feel is the route we should have gone, was not ongoing. In our city, we passed my own bylaw, believing we could stop St. Lawrence Cement. No other municipality is going to pass a hollow bylaw that it knows has no strength, no feet, no teeth.

Dr. Chant: I do not accept that, and I do not think Dr. Parrott did; so we have a difference of opinion.

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Mrs. Marland: Had the government established regulations and given the opportunity to the private sector, with encouragement, on a real basis to do what your crown corporation had done, do you not feel that even with some forms of grants we would not have a \$69-million or \$70-million tab today and might well have had the solution?

It is not as though it is a problem for Ontario. I think you used the words "joint ventures with the private sector." To hear you talking in 1988 about joint ventures with the private sector hurts a little bit financially, because I have to wonder why you did not start talking about joint ventures with the private sector in 1981.

Dr. Chant: We did, with respect. Actually, one of the first meetings I had was with the board of directors at Tricil in 1981 on that very point. The private sector would not touch us with a 10-foot pole until we were through the high cost of environmental approvals.

I would ask you, Mrs. Marland, in your scenario, would the private sector have been subject to the full provisions of the Environmental Assessment Act? I would submit that if they were, they could not have done it any cheaper than we have. If they were not, that is something else again, and one would have to make one's own individual judgement as to whether one wanted a project like this subjected to the requirements of the Environmental Assessment Act. I do.

Mrs. Marland: Yes, I do expect this kind of process for the treatment of hazardous waste in this province to be subjected to the Environmental Assessment Act. But the difference from what you have just said is that if it had cost the private sector a lot of money and it had the solution at the end, it would have been private money, not the Ontario taxpayers'.

Dr. Chant: But they tell me repeatedly—it is the most unanimous message I get from the private sector—"There's no way we would have put \$69 million up front before we spent a nickel of real capital in building a plant simply to get environmental approvals." They will not touch it.

Mrs. Marland: But the point is the world—

Mr. Jackson: They did not know eight years ago that it was going to cost \$69 million. Let us correct the thesis.

Dr. Chant: They knew it was going to cost a lot.

Mr. Breagh: I am with Harry Parrott on this one. I am sure he was right.

Mr. Chairman: Let us move on.

Mrs. Marland: You talk about the technology you are going to establish; there again, I thought the question of my colleague Mr. Velshi was very appropriate, and I did not quite hear a clear answer to him. You are talking about technologies that exist when you are talking about rotary kilns, chemical treatment plants and secure landfill. Around the world, in a sharing of information in all of those technologies—the engineering, the design and the function—all that information exists. I still do not understand you.

I think you also said this morning that we are not doing anything technically that has not been done. Are we saying then that we are spending 11 years and whatever number of dollars in excess? If it is seven years and \$70 million now, are we saying that we are just going to continue spending money when all that information is available other than the environmental assessment?

I thought it was interesting this morning when you compared environmental assessments for bridges and highways and so forth. Absolutely. We are talking about having wanted an environmental assessment for the Red Squirrel Road extension, whatever it is. We know environmental assessments take time. We know they take an average of two years. In this case, we are talking about 11 years.

Dr. Chant: You have not commented on how many years the Ministry of Natural Resources put into developing its proposal for the forestry hearings that are going on now. The hearings may last two years, but the MNR had been working on that proposal for six or eight years prior to even getting to the hearings. And it is a class hearing; it is not a specific hearing.

We cannot buy the blueprints for the plant outside Frankfurt, and we would not want to. There are always bells and whistles that are being added to these technologies to make them better and more effective. One of the areas that is under dynamic change now is the materials handling: How do you handle drums of waste? The Finns have the best way of doing this at the present moment, and that has to be incorporated into the engineering design, which ultimately will be the blueprint, and as I say, several feet high. I think there are something like 25,000 separate blueprints that will be developed.



The standard cost of that is from 15 per cent to 20 per cent of your capital. That is what you pay your engineering designers. Whether you are building a new gasoline production plant, a plastic plant or a steel mill, it does not matter; that is what you pay your engineers to design your plant from the collected wisdom around the world of how you design and operate a steel mill.

That is what our funds have gone into, the \$15 million that has been spent on engineering. It is a perfectly straightforward situation that anybody building a technology-oriented industrial establishment would have to spend.

I think it is worth noting that the five plants I point to in Europe are all government-owned. Denmark, Sweden, Finland and two plants in West Germany have all gone the same route that Dr. Parrott felt he had to go at the time, long ago, simply because they felt the many impediments to environmental approvals and the high cost of the technology for treating not the easy industrial waste but the difficult industrial waste were just disincentives to the private sector. That has been proven over and over again.

Mr. Jackson: Dr. Chant, you have already indicated on the record this morning that there was private sector participation with one of the German kilns.

Dr. Chant: That is right. It is government-owned, though.

Mr. Jackson: It can be 10 per cent, but your statement on the face of it refers to the government sector involving non-private-sector funding, and I did not think you wanted to leave that impression on the record.

Dr. Chant: There was no shareholder capital funding of the plant that I referred to, run by a company called HIM—I cannot give you the German for that—in the state of Hessen, just outside Frankfurt. Once the capital had been spent—they have two rotary kilns and a capacity substantially larger than we will have—they eventually had 250-odd industrial shareholders holding perhaps 30 per cent of the equity in the plant. That has since dwindled down to 40 or 50, because the industries that have been using the plant as customers feel there is nothing in it for them to be shareholders at all. So the private sector investment in the operation and maintenance of the plant is declining, simply from a dollars and cents point of view.

Mr. Jackson: Before you overstate that point, and I know we do not have the time and I am on a supplementary, it is fair—

Mrs. Marland: We do have the time.

Mr. Jackson: Well, we have two days.

We also have to be very careful in that much of the volumes of materials and the changes in materials are a function of the economy, as well as new technologies that are separate from the disposal elements of it. For the one in Alberta that you refer to in terms of the length of time it took to build it, much of that had to do with the economy of that province, but there was a tremendous amount of private sector involvement and mandate in terms of getting to the point of final construction, because it was to service essentially private sector needs.

Quite frankly, I prefer that we do not overstate what you are stating, because it is a complex issue. Some economies are moving out of the

petrochemical area for a variety of reasons, and that obviously has effect on the participation. It is a whole area and issue of what Ontario's future in this area is and whether or not this kiln is being overstated in terms of its long-term needs. You yourself are already on record as saying that there have been significant shifts in the nature and the content of the materials.

Mr. Chairman: It is a pretty long supplementary.

Mrs. Marland: It is all right.

Dr. Chant: Generally, the wastes tend to increase each year as industrial development proceeds—yes, influenced by the economy, yes, influenced by inflation, unemployment and other things, but generally they are going up. The nature, though, as I indicated, is changing. The wastes are become increasingly sludgy and solidy and this kind of thing.

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I mentioned earlier 16,000 industrial plants in Ontario are producing this kind of waste. I think each one of those plants, when we are up and running, will have to make its own decision as to how much in-plant treatment it wants to have. Some of them may say: "Why should I pay the OWMC or anybody else? We will do it ourselves."

Most of them, I think, will say: "We want to reduce the volume we are sending OWMC simply because it does not make sense to truck watery wastes around the province at 20 cents per ton-mile when we could dewater them, reduce the volume and reduce our transportation costs." That inevitably increases the nastiness of the wastes because they are more concentrated by the time they get to proper treatment facilities. I think that underscores the need.

I think also it is worth reminding ourselves that Alberta's is a crown corporation. Although they have contracted with a private sector company to run the plant, it does not own the plant; the government owns the plant.

Manitoba has created a crown corporation modelled exactly on Bill 90, the Ontario Waste Management Corporation Act, to guide them. In Ontario, we know what the situation is. Quebec has decided to go the private sector route, with a substantial government subsidy to assist them along the way. The new government in Quebec is quite aggressive about that.

The model in Ontario—I suppose we have learned to a high degree from western Europe—is going the crown corporation route or the government-owned company route, rightly or wrongly.

Mr. Chairman: Mrs. Marland, are you just about done?

Mrs. Marland: No.

Mr. Chairman: We have three others on the list before lunch.

Mrs. Marland: Just to comment on your statement, Dr. Chant, that 16,000 plants in this province will have to make their own decision about what to do with their waste, I would have hoped that you might have said that 16,000 plants in this province should be told what to do with their waste. The best solution would be for their own onsite treatment rather than relying on having to send some of their waste to what will still be a limited capacity at the OWMC plant.



I think the interesting aspect about the whole discussion of OWMC is that it cannot be the panacea or the solution for all of the industrial waste in this province, because it has got to have a limited capacity.

I would like to get back to the point you made again about the cost of where we are today, because you said you cannot buy the technology; we have to spend X amount of dollars on our own design of our own facility.

I know very well what percentage of construction cost goes into the design and the engineering drawings on any project. But the point is, I am speaking as someone who visited the Blue Circle cement company in southwest England which does refuse-derived fuel with residential municipal garbage; it is not industrial waste.

I am not making the comparison in terms of the kind of waste stream that the Blue Circle cement plant in England burns. The comparison I am making is that the Blue Circle company has visitors from all over the world. They travel all over the world selling their technology about how to burn the municipal waste stream.

I have not made inquiries around the world to the people who are in the business and the technology that we are dealing with here today, which is hazardous industrial waste, but I am sure that you have done a great deal of travelling in the last seven years.

I find it impossible to understand why there are not technologies available today that we could have bought rather than going to the expense of tooling up our own design and getting into our construction based on our own individual design, rather than saving money buying someone else's technology.

Dr. Chant: I assure you that the best advice I have had over the years is that you cannot buy rotary kilns off the shelf. The current design that will be provided to us will, for a time, provide us with the most modern, up-to-date, best rotary kiln in the world. Then the next one will be better than ours.

There are always developments in better ways of waste handling and of operating kilns. There are still debates about whether they should have water dribbling down the outside or whether they should be roofed and these kinds of things.

As I mentioned, Von Roll is the world's leading designer of rotary kilns, but none of them are off the shelf; they are tailor-made using the best technology input from a variety of sources. Finland has probably the world's best kiln now, followed by Sweden. There is a third kiln going in at this plant outside Frankfurt which Von Roll is also designing. Our design will benefit from that.

Going back to your prefatory remarks, there is no way that all of the industrial waste can be treated effectively by the individual plant. You cannot have a little rotary kiln. I would not want 10,000 little rotary kilns, even if you could buy them, because some of them would be in totally unsuitable areas. I am thinking of the three strictures that were laid on St. Lawrence Cement by the Dillon report which I think were very sensible.

I would not want a rotary kiln in downtown Mississauga at some little plant, even if it were living up to every jot and tittle of the regulations. It would be an unsuitable place for a small rotary kiln.

I cannot imagine each of the 16,000 plants, or even half of them, having their own little landfills and their own little solidification plants to effectively immobilize the treated waste residues, because you cannot put a landfill in many parts of the province; the hydrogeology is simply unsuitable.

Yes, the 16,000 plants can do more. Yes, the regulations have been and will be tightened in the future. I think we are aware of that. That will improve the situation. But there is no way we can have a cottage industry at the industrial plant level that would deal effectively with wastes. A dry cleaner cannot have a rotary kiln, and yet spent solvents have to be burned.

Mrs. Marland: With respect, I think it is very obvious to everyone in this room that I am not talking about that kind of cottage industry—every chemical-producing or industrial-waste producing plant in Ontario having its own little rotary kiln onsite. What I am talking about is that the long-term solution for industries that generate this kind of waste is to change their own technology, their own production and in fact having pretreatment of waste. That is what I am speaking of.

Certainly there is always going to be an end product that they cannot eliminate through the change of their own production, but I am talking about pretreatment. We even had a situation in Mississauga with St. Lawrence Starch, which is now pretreating waste that used to cost the taxpayers of the region of Peel a great deal because it went into the regular sewer system.

Every technology can be improved to the point where plants will be responsible for pretreatment of their wastes. I realize the cost of the product that you and I buy as an end result is escalated because their cost of operation has escalated, but the pretreatment of waste by some of these industrial hazardous waste producers has got to be the ultimate solution because, even in a government-operated project such as yours, there is always going to be a limited capacity.

I will yield the floor at this point, Mr. Chairman, but I would like to go back on the list because I do have further questions.

Dr. Chant: Could I just respond? I agree with you totally if you are talking about pretreatment at the industrial plant level. I do not want to be argumentative, but you did not use the word "pretreatment"; you said "treatment."

Pretreatment, of course. That is one of the reasons our plant is designed for between 150,000 tons and 300,000 tons a year, given that there are about three million tons a year of industrial waste produced in the province. I think there will be a great deal more pretreatment at the plant level, and I hope there will, which will reduce the volumes that we have to deal with.

Mrs. Marland: There has to be.

Dr. Chant: Yes, there has to be. I think the municipal-industrial strategy for abatement is designed for that, and other policies as well. That will reduce the overall volume to substantially below the three million tons that we are familiar with now. Again I make the point: There will be more sludges, more solids, which are more difficult from a materials handling point of view, generally more concentrated and therefore more toxic. As a result, you still have to have your end destination, which I think is increasingly what the role of OWMC is after the fullest pretreatment, especially dewatering, has been done at the individual industrial plant level.



I agree with you totally. These are the dynamics that are operating on the situation.

Mrs. Marland: I am sorry; I just have to ask you this then. When you are talking about getting more into the disposal of solids, are you not then getting into the chemical treatment plant method and the secure landfill?

Dr. Chant: No. The incinerator will deal with solids too. It is quite common practice to put drummed wastes full of sludge through incinerators, to put contaminated capacitors and transformers and that sort of thing through the rotary kilns. That is a common practice in Europe.

Mrs. Marland: In Europe.

Dr. Chant: Yes.

Mrs. Marland: And we can buy their technology.

Dr. Chant: We can buy the technology as it is today, designed for Ontario's needs. Ontario's wastes are not the same as those of the state of Hessen, the state of Bavaria, Finland, Sweden or Denmark. They are different in quantity. They are different in kind, degree of solidness and sludginess versus the degree of liquidness and so on. These things do have to be tailor-made, given the basic global wisdom on how you design a rotary kiln. I will let it go at that.

Mr. Dietsch: I want to go back to some of the earlier discussions about those individuals who live in the area surrounding the proposed site and some of the traumatic feelings that individuals in that area I am sure are encountering.

I am talking about the uncertainty of what has been going on over the years, the uncertainty with respect to—the site has been chosen now for I think it is in the neighbourhood of three years—individuals not knowing particularly whether that is going to have a detrimental effect on the values of their property or whether they in fact should be putting more money into the upgrading of their property, and the uncertainty as to whether the newest and most profound technology is as safe as they would like it to be and as to the transportation of the waste to those areas.

Those individuals, as you know, who live in those areas surrounding the proposed site and in proximity to the routes out to the larger arteries, I am sure are feeling a lot of difficult times and difficult inner feelings and inner struggles about the future that they hold.

I would like you to elaborate on how you resolve those inner feelings and conflicts that those people are going through. What can I as an individual who represents them tell them? It has been such a long time in the mill and it appears that it is probably going to be longer still. How do you allay those fears?

Dr. Chant: That is an excellent question, and I cannot give you a fully satisfying answer because clearly we have not been able to allay all the fears on the part of everybody.

The real tragedy of the timetable—we have talked about it a lot today: it has cost a lot of money and it has taken a lot of time—is what you have put your finger on: the people in that community living under this cloud for

probably five to six years before the uncertainty is clarified one way or the other at the end of the hearing process.

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There are four families who live on the site, and that is one of the many, many factors that persuaded us to choose that site. That was the fewest number of people actually living on the site who would have to be expropriated and relocated.

There are about 50 families living in the impact zone that has been very carefully measured around this. These are not people whose properties would be expropriated, but there is a property value protection program and provision for voluntary buyouts and things that are embodied in a draft document that should be going to cabinet some time this fall. Michael Scott can speak about that.

We are asked often: "Should I improve my home? I want to build a rec room, I want to paint the house, I want to build a little greenhouse for my wife's African violets" or whatever it might be. They are very sincere questions: "Should we do it, given this uncertainty?" Our advice is: "Yes, do it. Keep all your bills and invoices, and this will become part of the financial settlement that eventually is reached if our plan is approved.

With respect to transportation, I have gone out over the last year on what we call kitchen meetings. I go out, say, a night a month—I think I have had 15 of them in the last year—and meet with three or four families in somebody's home. I talk about whatever their issues are. Maybe they are all poultry farmers. Maybe they are all fruit farmers. Maybe they all live on the access route.

The access route, I would say, is among the top two or three concerns that have been expressed to us. The preferred access route is down Victoria Avenue, as I am sure you know, and along Highway 20. Our studies, which we have done on existing traffic patterns on that particular road, show that we would be adding between three and five per cent only to the trucks. There are many hazardous loads going over there now as a shortcut from Hamilton and Stoney Creek over to the Welland and Fort Erie area particularly—trucks full of sulphuric acid, nitric acid, chlorine and all kinds of very nasty stuff.

Most people are not conscious of the fact that those trucks are whizzing by their door every day. I am not suggesting that they should cease to have any concern or fears about our trucking activities, but I do try to encourage people to put it in perspective. It is a small addition to an already fairly heavy traffic flow along Victoria Avenue.

The sad bottom line is that we cannot reassure everybody. There are some people—fortunately, not a large number—who are on the edge of hysteria, I would say, over the fear that our plant will come there. I think this would happen in any community that we had selected; there will always be people who will react that way. I am not being critical. I really feel very sympathetic to these people. Nobody is putting on a sham or a show.

I think the sad fact is, there is nothing we can do to reassure those people. We can talk about property value protection, emergency response and everything else, and that does not meet their concerns. Some of their concerns, I would say as a scientist, are irrational, but that does not mean they are any the less real and any the less concerning to those families who happen to have those fears.



It is Michael Scott's job, and his staff, and particularly the staff in our Smithville office, to try to respond to those people with as much factual information as we can give them; not to try to con them or persuade them that this is a wonderful thing for them. It is not, and the community is very disturbed. Michael, do you want to add to that? You have even more firsthand experiences than I have, I think.

Mr. Scott: As Don has said, it is an excellent question and one that comes up quite a bit. I think it would be fair to say that while the people in the community want this cloud of uncertainty to be removed one way or the other, most of them have decided to get on with their lives, recognizing that at some point over the next couple of years there is going to be a decision made on this project, which is obviously going to have some effect on the community.

I think that is different than it was a few years ago when the community, one could sense, was going on hold; everybody wanted to assess very carefully what this meant to them, to their property and to their family and whether they should pass the farm on to their sons, sell it now, or what have you.

Our sense of it is now that people are starting to, if I can use the word, adjust to the fact that this cloud is there; they are starting to get on with their lives. There is an increasing number of properties being sold on the market, whereas a couple of years ago that clearly was not happening. For example, last June we had seven people come into the local office that we operate in Smithville interested in buying listed properties in the area. Only one of those people said definitely, after what they heard, they were not going to buy. The other six said they appreciated that information, and they subsequently came out to some additional meetings that our staff were holding to collect more information.

We have held sessions with real estate agents. We have gone to the real estate association in the region and the township and held seminars for real estate agents so they can have access to information about the project, which they must have in putting properties on the market in the area. They must make buyers aware of the fact that this project has been proposed for the area.

I think there has been a perceptible change over the past couple of years in the direction that I am suggesting, but still there is that sense of uncertainty and that wish that the cloud could be removed. I do not think there is any question about that, as Don has said.

Mr. Dietsch: I have a few more questions, Mr. Chairman. Do you want to continue, or do you want to break for lunch at this time?

Mr. Chairman: If you have a few more questions, I think the best thing we could do now is to adjourn until two o'clock this afternoon. We will then continue the hearings on the Ontario Waste Management Corp.

The committee recessed at 12 noon.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:  
ONTARIO WASTE MANAGEMENT CORP.

WEDNESDAY, AUGUST 24, 1988

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Fleet, David (High Park-Swansea L) for Mr. South

LeBourdais, Linda (Etobicoke West L) for Mr. Black

Marland, Margaret (Mississauga South PC) for Mr. Runciman

Clerk: Deller, Deborah

Clerk pro tem: Arnott, Douglas

Staff:

Yeager, Lewis, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Waste Management Corp.:

Chant, Dr. Donald A., Chairman and President

Scott, Michael G., Director of Communications

Bentley, Lorne K., Director of Administration and Finance

Austin, Susan, Executive Assistant to President



AFTERNOON SITTING

The committee resumed at 2 p.m. in room 151.

Mr. Chairman: I observe that there is a quorum present. We are dealing with the Ontario Waste Management Corp. We have Dr. Chant and the delegation before us today dealing with the concerns related to the OWMC. When we left off before lunch, Mr. Dietsch had the floor and was asking questions. Would you like to carry on, Mr. Dietsch?

Mr. Dietsch: Dr. Chant, we were discussing before lunch some of the major concerns of the individuals who are so closely related to the proposed site. As those concerns are heightened in those particular areas, as are the concerns of individuals in the surrounding outlying areas with respect to the possibilities of acid rain coming from the stack, etc.—and I guess that has some far-reaching implications in a much broader field—I wonder if you would highlight to the committee some of the actions or perhaps some of the areas you are moving into with your corporation in terms of trying to bring those concerns under arrest.

Dr. Chant: I will be glad to. I am going to turn this question over to Michael Scott in a moment, but I think our bottom-line position from the beginning is to try to be as open as we can and to consult as widely as we can. We are required to consult by the Environmental Assessment Act, anyhow. I personally believe there should not be any surprises to people as we move through this program, and we have tried to keep people aware of what we are doing.

Way back at the beginning of our search for a site, after we turned down South Cayuga, we had quite a number of workshops and public meetings to get people's views on where we should go from here: How do you find a site? What are the important things to be considered?

I mentioned this morning that we have used over 150 different factors in trying to find a site. In those early days, the public consistently said, "Put socioeconomic concerns higher up on your list of priorities," and we did. We revised our program of those very early years in direct response to that message we were getting from the public.

We do have the office in Smithville, which I mentioned this morning, with a staff of three. They get well over 100 inquiries and visits each month from a very wide variety of people, from schoolchildren who are writing essays and want to get factual material, to people who come in and want to express concerns.

Many people coming in—I would not pretend the majority—are in support of the proposal. The West Lincoln Chamber of Commerce has not indicated opposition. Many store owners, people like that, come in and say: "Will you use local plumbing people? Will you contract your snow removal? When you have visitors, will you put them up at my motel and my restaurant?" and things like that. People, I think, are beginning to ask if there is an economic benefit which would help offset—I am not suggesting this wins the day; it does not—the negative things people perceive with respect to this facility.

My own feeling is that a lot of the concern expressed in the community, particularly by people who are not our immediate neighbours, is a basic concern over land values: Will the neighbourhood go to hell because we have

this industrial plant there? It is a legitimate concern. I think people sometimes feel reluctant to discuss that, somehow feeling it is not a nice emotion to have. I do not see anything wrong with it. I think I would be concerned about property value too, if I lived there. That is a perfectly legitimate concern.

We have developed this property value protection program which is now, as I indicated this morning, being drafted by the ministry for a cabinet document some time this fall. I do not think it would be violating the confidence of the cabinet draft if Michael Scott might start off his answer to your question, Mr. Dietsch, by touching briefly on the provisions we expect will be in our property value protection program.

Mr. Scott: To follow up on what Dr. Chant has said, let me begin with that program. When we announced the site in September 1985, we commenced a long series of detailed studies on and around the site to identify all the various types of possible impacts which could occur once the plant was operational.

One of the studies we did involved taking a look at similar types of facilities elsewhere in North America and what effect, if any, they have had on the property values of residents living in the immediate vicinity of the site. That study indicated that there is a possibility in the short term, for the first two to three years of operation of the plant, that the property values of the immediate neighbours of the plant could be affected. In the longer term, however, there is no indication that they will be.

To address that point—and this will be described in more detail in the environmental assessment; it is in fact described in draft in the draft environmental assessment—we are proposing to put in place a property value protection program modelled on the same type of program Ontario Hydro put in place at Bruce. Essentially, what it will involve is ensuring that for those properties around the plant which are affected either by noise, dust or by what we are calling a visual impact—they can see the facility from their own property—we will put in place a program which guarantees fair market value for their property should they wish to leave.

This is the same policy Ontario Hydro put in place at Bruce. They indicated there that people within a three-mile to five-mile radius of the plant who felt they simply did not want to stay could sell their property to Hydro. Hydro would be a purchaser using fair market value and then Hydro would resell the property on the marketplace, which is in effect what it did. The end result, I believe, was that Hydro ended up making a small profit on the program because, first, there were very few property owners who took advantage of it and, second, Hydro was able to resell the property of those who did.

There are 56 properties in the immediate vicinity of the facility which could be affected potentially by noise, by dust from trucks or by the visual impact. For all of those residents, we are proposing that, should they feel these are types of impacts they simply do not want to put up with and they want to sell their property, we will be a willing buyer at fair market value, and then turn around and resell the property on the open marketplace. This is a program which we have discussed in great detail in the community. It is one we have modelled, as I said earlier, on Ontario Hydro in its detail. The final details of it are currently under discussion with the government.

Mr. Dietsch: Before I go into the acid rain question I just asked, are you doing an assessment on fair market value before the site was announced?



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Mr. Scott: Yes, it would be based on the price that property would gain on the marketplace if the plant were not there and it would be using as a benchmark the presite announcement values that were in place at that time. It would be assuming what this property would get on the marketplace if the plant were not there. To assist in determining that market value, we would be using benchmark studies to assess the market value of properties of similar size and nature in farming operations in other parts of the province. A detailed series of steps would be taken in determining the value of the property. We would be using Ministry of Government Services appraisers and real estate experts in arriving at that decision. They have been involved in discussions on this program from the beginning.

Mr. Dietsch: Dr. Chant, perhaps you could address the question with respect to the acid rain. In addition to that, perhaps you could outline whether you have a factual presentation on just exactly which area will be more directly affected than others by your research with respect to wind course, etc.

Dr. Chant: To answer the last question first, yes, we do. We engaged, as soon as the site was selected in 1985, the Ontario Research Foundation to do all the atmospheric work under contract to us. You probably know ORF at Sheridan Park. One of the things that is required by the ministry of any proponent, such as us, is certain modelling exercises of probable air impacts, airshed characteristics, air movements and things like that.

It is not acid rain, I think, that is of concern to people. Our output of sulphur and nitrogen oxides and things like that would be very modest compared to Hydro, Stelco, Inco or something like that. It is the toxic element that bothers people and the possibility of soot and particulate and things like that.

One of the requirements of the regulations is that through these atmospheric studies, and we have had an air monitoring station on the site for over two years, you have to predict the point of maximum impingement, where the plume from your stack would touch the ground at maximum concentration. It is a point about two and a half kilometres to the northeast of the site itself, the farm of a chap called Ed Comfort. I do not know how well you know the people out there, but we have had many conversations with Mr. Comfort.

The calculation the Ontario Research Foundation has done there is that we would add less than one per cent to the material already being deposited on Mr. Comfort's crops from all other sources, including the United States. West Lincoln is downwind of Nanticoke, as you know, and all these other sources. We would be adding less than one per cent to that, which is well within whatever the regulations permit.

The bottom line on all air emissions is that in any emission we would not be exceeding by more than five per cent what is permitted by the air regulations now and in the foreseeable future, that is, with regulatory changes already in the pipeline. That is a remarkable technical achievement, if that is the way the plant actually turns out, and that is certainly our determination. We would be cleaner than anyone else in the province and far cleaner than the law requires us to be. We would be using three emission-cleansing devices: an electrostatic precipitator, a wet scrubber and a dry scrubber. This is more than any other rotary kiln would have, but we feel we want to err on the margin of safety.

The technical answer is that there would be no measurable impact from the air emissions. People, of course, are not willing to take that at face value. I understand and respect them for not doing that but, parenthetically, there are a number of issues like that which can usefully and profitably be subject to intense scrutiny through the hearing process, going back to the conversation we had this morning.

I think we should be required to prove that assertion on the basis of the track record, the performance record of the kilns we point to in western Europe and the design work we have put in to make sure we have a better kiln than anybody else has for the time being, the most up-to-date, the most modern, the best-engineered and so on. We should be required, in the face of challenging professional witnesses, to prove those assertions to the satisfaction of the hearing panel. I think there is great merit in the hearing process to force us to do that.

Mr. Dietsch: The other questions I have are related to length of time in putting forward such a proposal in relationship to whether in fact it is the best technology of the day. You have said there is a possibility that the hearings will begin some time in early 1989 and could go on for the period of a year, perhaps longer. Then it is expected that construction would start, so we are talking approximately two to three years. What in fact does that do to the most updated technology at that time?

Recognizing the computer age that we find ourselves in, it seems to be outdated between the time we draw up our plan and the time we conclude our project. I have some concern about that relationship with this kind of a project as well, having spent those kinds of dollars and waited that length of time. I want to be sure that the people in the area are getting the most and the highest, safest possible facility.

Dr. Chant: I think the answer basically is, as I indicated this morning, that however complex these treatment facilities are from an engineering point of view, they are not really high technology. The kinds of changes that have taken place in the last decade in rotary kilns, to use that as an example, are details of materials handling. I mentioned that this morning.

How do you get the variety of materials from solids to sludges to liquids in the right mix? As with many things, the mix of waste going into the kiln determines how safely the kiln can be operated. You would never load it with polychlorinated biphenyls, for example. You would never have more than, say, one or two per cent of your wastes in a given day being PCBs mixed in with many other things.

You are also concerned about mixing with the fuel value of the wastes that are going in. You want a certain BTU mix so that you minimize the use of virgin fuel and maximize your dependence on the heat value of the waste that you are burning, just to run an economical operation.

There are changes that take place in materials handling. There is a debate now going on as to whether kilns should have a roof over them or whether they should not. Those are things that are fairly easily adapted to before you get to the end of your detailed engineering process. We have not even begun detailed engineering yet. We are still at the preliminary engineering stage.

But having said that, what I am saying is that we can adapt quite a long



way to the kinds of changes that may take place in the way in which you design and operate a kiln. There will come a time, though, when we have to finalize those blueprints and get down to the actual construction. At that stage, I think we would say that the design is frozen until we get the kiln up and running. Then we could begin to further modify it if other places discover things or if we discover things that would lead to a more efficient and more effective operation.

I do not think you can compare it to the extraordinarily rapid development in the computer field. We are not talking about that level of sophistication and that level of research.

Mr. Dietsch: I realize that as a result of some of your answers this morning. I was just using that as a parallel to draw to because in some of your earlier comments you had indicated, or at least I had understood you to indicate, that you were in fact watching the development, not only in North America but also in Europe, and that you were trying to enhance this facility with the improvements that were made in those areas as well.

I guess that draws some concern in my mind with respect to whether there is some advancement in that particular area and whether we try to adapt it in. We are into a three-year freeze phase where we are into hearings etc., unless of course there is that possibility of no additional hearings if you add some new technological change to things. Maybe you could address that. I am not sure whether that would happen.

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Dr. Chant: I think that would depend on the hearing panel. Our reading of the environmental act requirements is that preliminary engineering design is what the hearing panel is accustomed to and wants to see. They do not want to see the detailed design; they would leave that to the director of approvals in the ministry after they have given their basic approval to the conceptual design of the facilities. But we can introduce new wrinkles, new technological advances, any time during the hearings. People have to be given due notice of it, and their own experts they have hired through the intervenor funding would have to be given time to have a look at it.

I mentioned this morning, I think, that the world's best kiln at the moment is in Finland. I modify that. PPG Industries, near Columbus, Ohio, is just in the process right now of commissioning a new rotary kiln for its own waste. It is not a commercial operation; it is designed to take care of PPG's waste from 25 factories in North America. That is the world's best-designed kiln, and there are some wrinkles on that—it is also designed by Von Roll, our consultants—that would be built into our kiln as well.

Remember that this morning I said our basic criterion was that we will only adopt proven technology that has had at least a year's operation on a commercial scale. I think that does give us some lead time, but if some new innovation came along, such as a different way of handling the waste going into the kiln or putting a roof over the kiln or something like that, I do not think that would delay the approvals and the hearing process, because my guess is the hearing panel would say, "We don't see any environmental consequences of that, except that possibly you will run an even better operation than the original one you proposed."

If there was a major engineering breakthrough that I cannot predict at the moment, yes, there is always a possibility of the hearing panel saying,

"Whoa, we'd better pause for a few months while people come to grips with this new development." I do not think there is anything like that on the horizon, but it is always a possibility.

Mr. Chairman: Mrs. Marland has a supplementary question she would like to ask to that very important question that was just asked.

Mr. Dietsch: That will be interesting to listen to.

Mrs. Marland: Further to Mr. Dietsch's question about the design technology, I think your answer was that you have not started your design study.

Dr. Chant: The detailed design.

Mrs. Marland: Could you tell this committee how an environmental assessment can be made on something that has not been finalized in detailed design?

Dr. Chant: I think that question is more properly addressed to the chairman of the Environmental Assessment Board, but the Environmental Assessment Board in its proceedings on hearings on many, many other things has seemed to feel it was sufficient to deal with the preliminary engineering design, which is voluminous but not nearly as voluminous as the detailed engineering design.

We have done design to the point now where you can do what is called a haz ops, or hazardous operations, analysis. That looks at the preliminary design of every pump and every pipe and makes a statistical estimate of the likelihood of breakdown and what the fail-safe backup provisions would be. That is included in the preliminary design, but they are not construction documents. That is the difference between preliminary design and detailed engineering design.

If the hearing panel changes its present policy and says, "We'll only deal with detailed engineering design," then we would have to produce detailed engineering design; but to this point, in other projects, it seems to feel the preliminary engineering is sufficient.

Mr. Dietsch: I would be pleased to relinquish the floor to some of my other friends here.

Mr. Chairman: I have a list.

Mr. Breaugh: There is no test for friendship here; you know that.

Mr. Lipsett: Industrial or whatever type of waste is predominantly generated in urban areas; it seems to find its way out into the countryside most of the time. Coming from a rural part of Ontario, I am interested in some site-specific facts and life at the site after the site is closed. What is the present zoning designation of the site?

Dr. Chant: Rural agricultural.

Mr. Lipsett: The agricultural designation usually has more specific designations as to its quality. Do you know if it is A1?

Dr. Chant: It is 90 per cent class 3 agricultural land. There is



about five per cent which is class 1 improved agricultural land, but basically it is class 3. You realize that we are dealing with deep clay, which I am sure you know is not prime agricultural land without a great deal of drainage and so on being provided; but it is class 3, basically. About a third of it is second-growth woodlot and the rest is pasturage. I think there may be some field crops, soybeans or something, on some of it but most of it is pasturage and second-growth woodlot from the point of view of agricultural usage.

Mr. Lipsett: The site is how large?

Dr. Chant: It is 325 acres; 124 hectares.

Mr. Lipsett: In percentages, what will be the size of the treatment plant area, the land disposal site and then the buffer?

Dr. Chant: If you take the 30-year lifetime of the landfill I mentioned this morning, there has to be a 400-metre buffer zone around the plant, which would be mostly accommodated with the landfill. But of that 325 acres, my guess is that at the end of 30 years, we would be utilizing at least 90 per cent of that site in landfill or operational area.

The area of the plant—the tank farms, the administration, the lab, the receiving waste and the truck washing—probably is 15 per cent of the land area, but that is off the top of my head. I think 12 per cent to 15 per cent is operational area.

At the end of 30 years, the site will be virtually used up. I think that is fair enough to say.

Mr. Lipsett: So you are indicating probably a maximum of a 10 per cent buffer area around the outside of the site, when fully used.

Dr. Chant: Yes. The regulations today—again I would have to go to source, but 400 metres is required of an operational zone; that would be a treatment plant itself. I think the buffer zone around a landfill is 50 metres beyond the landfill. We would exceed that, but that is what the law requires at the present moment.

Mr. Lipsett: In your opinion, do you feel that is an adequate buffer zone?

Dr. Chant: The 400 metres around the treatment plant boundaries or the 50 metres?

Mr. Lipsett: The 50 metres.

Dr. Chant: I think it is, on the basis of the quality of the clay and the impermeability of the clay. We are dealing with clay that is about  $10^{-8}$ , so the hydrogeologists say. That is a fraction of a centimetre of movement per year, realizing that the treated waste residues are turned into concrete. There is nothing around the boundaries beyond that.

Let's say the hearing panel laid down a condition that you have to have a 400-metre buffer zone around the landfill. It would make the site that much bigger but it would not dislocate anybody who is not already included in the property value protection program and the neighbourhood. I do not think that is likely, but if it did, we could certainly accommodate that.

Mr. Lipsett: Will there be a post-operation maintenance plan?

Dr. Chant: Yes. One of the requirements is that we include in our environmental assessment documentation for the hearing process the post-closure monitoring and care of the facility.

Again, going back to our discussion this morning, Dr. Parrott and the government of the time, which set up the crown corporation, felt that another advantage of that approach is that we, as a crown agency, government owned, could be required in perpetuity to maintain, monitor and take care of the post-closure site, whereas in the private sector, people would presumably be free to sell it and walk away. I am not advancing that argument, but that is one argument the government made to me at the time; put it that way. That has to be included in our environmental assessment: What do you do when the plant has run its useful life and has been closed?

Mr. Lipsett: If we are looking at a user-fee basis, will there be some amount set aside from the fee for that perpetual care?

Dr. Chant: Yes, there will. We have to set up a liability fund from our revenues which would take care of any claims against the plant during the years of operation and presumably into post-closure.

Looking ahead 30 years, I can only be sure of one thing: I will not be around at that time, at least not in this position. My guess is that there would have to be another plant somewhere using the technology of the day and that the revenue of that plant would have to cover whatever residual obligations and liabilities there were from the closed plant in West Lincoln. I assume that would be built into the price structure looking that far ahead.

Definitely, that is part of our financial planning, and I think the government requires us to take that long view of what our financial obligations might be, given the worst-case scenario. We have always tried to work on the worst-case scenario, so let us assume some disaster 50 years on and suddenly the corporation would be liable for that and would be obliged to take care it.

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Mr. Lipsett: One last question: None of us will be there at the time, but what will the site look like, in your opinion, in 2088?

Dr. Chant: In 2088? Let me assume, and please do not hold me to this; you are speculating a century in advance now—

Mr. Chairman: It will be on the record.

Dr. Chant: I will come back and haunt it. My guess is that the landfill will have long ago run its useful course in the capacity terms I mentioned this morning. The options of the day will be either to expand the landfill there or to go and look for another landfill.

I would hope the plant would still be operating; there is no reason why it should not be, if it is maintained and if the technology is updated as new developments come along. It will sit there, as it will in 1998, looking like a medium-sized industrial plant. That is essentially what it will look like. I would not see much change in that, but who knows? A hundred years is a long time.



Mr. Chairman: I have one question, Dr. Chant, on waste generation. As you are aware and we are all aware, there is a plant in London, Ontario, that is affiliated with the hospital there.

Dr. Chant: Victoria Hospital.

Mr. Chairman: Yes. Does your corporation have any input into that facility?

Dr. Chant: No, except to share some experiences with the administrators of the hospital, with whom I have met from time to time. They were designing for burning garbage to provide energy to Victoria Hospital. I think they geared up to burning about 30 per cent of London's organic domestic and municipal waste. They are an example I do not point to to make any particular point, but they were in the approvals process for three long years and ended up in court. It was finally approved by cabinet and it is now built, I understand, and undergoing test burns.

There is quite a difference between a garbage incinerator and the technology for that and the incinerator that we propose for liquid and other industrial waste. The temperatures are different, the holding times are different, the waste mixes are different and the air emission controlling devices are different as well.

I think it is a good kiln in Victoria, but very controversial, as I am sure you know, with a very lengthy and drawn-out approvals process because of the depth of public concern.

Mr. Chairman: In your opinion, do you think we should be promoting that in Ontario in different areas?

Dr. Chant: I am beyond my field with garbage, but I think there are some parallels. I think as a society, and I am just as susceptible to this as anybody else, we always look for easy answers and we always look for simple answers, and in garbage there are not simple answers. Of course we should do more recycling. Of course industry should eliminate overpackaging. Why do we have to buy toothpaste tubes in a cardboard box, just as a trivial example of what I mean?

When you have done all those things, the recycling potential for domestic garbage is probably between 25 per cent and 30 per cent, and you can reduce excess packaging. You are still left with garbage that has to be disposed of. You have three choices. You have had only three choices in the history of mankind, and as far as I know, you will have only three choices. You can ship it all to somebody else and sweep it under the carpet, which is no longer favoured in our society; you can burn it; or you can bury it, or any mixture of those three things.

There is not an easy answer. Somebody is going to see himself as being imposed on by a community that has to get rid of the irreducible hard core of domestic municipal waste. We have to do all those other things. There is no simple answer. There are many answers that have to be put together into a coherent approach to solving that problem. I have to say I do not think we are there yet with garbage, and I do not think we are there yet with industrial waste either.

Mr. Campbell: First of all, I am pleased to see that somebody else beyond my constituents gets excited about our solutions to waste management. I

will be happy to relay that back that somebody else is getting excited about it.

I would like to explore some of the technology. When you mentioned this morning about Finland's rotary kiln, as I understand it, there are two components to this whole argument: one is the burn and the other is the waste management afterwards, when you are burying it mixed with concrete and other materials. The soils, I suspect, would be a lot different in the northern Europe scenario you painted this morning than they would be in southern Ontario. Could you comment as to where in Finland and Sweden they are disposing of that residue?

Dr. Chant: They do have that problem. They do not have the luxury, if I can put it that way, of having deep impermeable clay soils in most of the Scandinavian countries. They have tended to put them fairly remote from centres of population. In Sweden, it is quite a long way from Stockholm, but it is at a little community, a town of maybe 25,000 people, about 100 miles from Stockholm. In Finland, it is out in the wilderness as well.

The products of incineration—forget about the stack gases, which I have already commented on—are ash and slag. They landfill the ash and slag without the solidification process that Stablex uses in Quebec and we will be incorporating in ours. They do not go all the way with that. There are some highly soluble salts in some of the ashes that have to be treated quite cautiously.

In West Germany, they tend to export those to East Germany, which is interested in making western marks. The story, which may be apocryphal, is that the East Germans promptly dump it in the Rhine River and it flows back into West Germany. I do not know whether that is true or not. The soluble ashes are a problem. In West Germany, they put them in a salt mine. In Sweden and Finland, they put them in landfills.

Mr. Campbell: I am rapidly getting to the end of my search of the people in southern Ontario who think that mine shaft disposal is the only answer for southern Ontario waste management or garbage. To clarify, all of these people who come around and say to use European technology or just throw it down a mine shaft are a little bit simplistic.

Dr. Chant: Could I just comment on that? I share your reservations about that, for a whole bunch of reasons. I am not convinced that mine shafts are any more secure than anything else, but in Ontario particularly we have looked at the salt mine option. We have good salt mines in Ontario, as you are well aware. I have been out to Goderich and have talked to some of the executives in the salt companies. The salt mines in Goderich go a mile or a mile and a half out under Lake Huron. Even though they are 600 or 1,000 feet deep, I would have uneasiness about that.

If I were a member of the public and lived in Goderich, I sure as hell would be uneasy about putting it out under Lake Huron. Even though a salt mine has never collapsed and contaminated the lake, I have a deep uneasiness about that solution. There is only one salt mine in the world that we have been able to identify that is taking small amounts of these highly soluble salt ash residues from incinerators, and that is the Herfe Neuroda in West Germany. It is the only example we have in the world of salt mine disposal.

The other alternatives—deep-well injection, pumping it down into the ground and things like that—have long ago been prohibited by our Ministry of



the Environment, and I think properly so. Although that is what Alberta is doing, I do not think that would be permitted in Ontario.

Again, commenting on people's natural desire to find simple answers to some of these complex problems, I found in my travels around the province that the first reaction of many communities to the garbage problem is to find some old gravel pit and fill it up with garbage. It is a very bad solution, because gravel does not hold leachates and things like that. You are almost guaranteed that an old gravel pit filled with garbage will leak and cause somebody a problem.

Mr. Campbell: I think the geology supports your thesis. That is a scenario that we in northern Ontario do not entertain for one minute. If southern Ontario is getting the technology to deal with these, and if it is applicable, that answer should be looked at.

In passing too, even with all of the materials and the rotary kilns that seem to be available in northern Europe, parts of Europe are still shipping what you called very nasty waste to the Third World. As you said, a solution is that you send it somewhere else. The Danube River and others are very badly polluted because of the dumping standards being so different in parts of Europe.

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Dr. Chant: It is easy to generalize about Europe. I have pointed to the good ones in Europe: Denmark, Sweden, Finland and two states out of eight in West Germany; the other six states are not so hot. Then there are France and Italy. Great Britain has one of the worst records in western Europe; the Netherlands is not so good either. So it is a very patchy situation, even in western Europe, where they have taken strides that we are still in the process of taking in North America.

The United States' record is not good either, despite its high-technology society. Japan has found some answers to garbage which I think are interesting, but it is at about the same stage as we are with industrial waste. So this is an evolving field; there is no doubt about it.

Mr. Campbell: I have a couple of more points. You talked this morning about net importing of waste for disposal into Ontario. If we do not have facilities now—and you are just planning a facility that should, for a period of time, take care of the problem—where is this waste being stored while we wait, if we are in fact disposing of a lot of our waste outside our boundaries?

Dr. Chant: It is not a lot outside our boundaries. It is about eight per cent of the waste that is generated that is being exported at the present moment. It is the nastier component simply because industries do not want to have the storage of nasty material while waiting for us or somebody else to come along with a treatment plant.

The United States, as I think you are all probably aware, closed the borders to import from Canada of polychlorinated biphenyls early in the 1980s. That situation still stands today. I think most industrial plants with the really nasty wastes are in fact storing them and waiting for us to come along.

There are PCBs stored—again, to use the example—all over this province. Hydro has a lot of them, and most people are aware of that. But many

other industries do too. They are storing them in storage facilities approved by the Ministry of the Environment, simply waiting for somebody to come along with a rotary kiln—we hope it will be us—who can take that material off their hands.

Of course, we all know that, in years past, many of these wastes were going down the sewers and going into other unsatisfactory disposal destinations that are increasingly being shut off by the Ministry of the Environment's tighter regulations, by the municipal-industrial strategy for abatement and so on, all of which I strongly endorse.

But I think one of the lessons we have learned from western Europe, and also from looking at the Stablex situation in Quebec, is that your tightening regulations simply have to go hand in hand with the more satisfactory alternatives. If you cannot put it down the sewer, what do you do with it? You look for recycling opportunities, you look for waste reduction opportunities and you look for modern treatment plants that will take the residues, after the industry has done all it can, off its hands for a price to dispose of it properly. One cannot get too far ahead of the other, I think.

Mr. Campbell: I do not know if you are aware—somewhere I was trying to find the reference—that there was a PCB warehouse storage area that caught fire.

Dr. Chant: Yes. It was in the paper, I think, this morning, or on the radio.

Mr. Campbell: Yes, maybe it was; in Montreal, my colleague tells me. That is really more my concern about storage: the kinds of security problems that you would have not only with fire but with theft or kids vandalizing the place, or other things that could happen while these things are being stored while we are waiting for a solution. In your estimation, of the PCBs that are around, could you give us a percentage of the PCBs that are being destroyed versus the percentage that are being stored?

Dr. Chant: Zero per cent is being destroyed. There are no approved treatment facilities in Ontario or Canada at the present moment for PCB destruction.

Mr. Campbell: I take it, though, from your earlier remarks that there are in the United States but they are closed to us?

Dr. Chant: Yes. There are a couple of kilns. One in Arlington, Texas, I think, does burn PCBs. It is the only one I am aware of. There probably are more, but the border is closed to us, anyhow.

Alberta has indicated with its kiln—it is not a rotary kiln, it is a rocking kiln—that it will not accept PCBs from other provinces and that it is building for Alberta's needs. We feel that we are building for Ontario's needs. Any PCBs coming out of service through drain transformers, electrical equipment and so on have to be stored in this province because there is no legal destination for them at all.

Mr. Campbell: And to reiterate or re-emphasize, your facilities plan to have such a destruction capability?

Dr. Chant: Yes.



Mr. Campbell: As part of your design it is included?

Dr. Chant: Yes.

Mr. Campbell: My last comment, I guess—

Interjection.

Mr. Campbell: I am sorry.

Mrs. LeBourdais: I just have a supplementary. Coincidentally, my question was going to be on that accident last night. Apparently, 20,000 barrels of highly toxic PCBs were stored. I was just wondering if any of the amendments that are planned concerning the storage of PCB wastes could help to prevent a similar accident in Ontario. Also, since apparently 2,000 people had to be evacuated, do we have adequate preparation for that kind of thing?

Dr. Chant: I do not know too much about the Quebec laws and regulations. I think it is fair to say that it has lagged behind Ontario, and now Mr. Lincoln, the Minister of the Environment there, is trying very hard to move along fast. But I think their provisions for licensed storage have not been as secure as the more recent ones in Ontario. I have seen some PCB storage facilities in Ontario and I cannot imagine how a fire would start there. I do not know anything about the Montreal circumstances, but I can only imagine that it was not as well designed and operated as the storage facilities are required to be in Ontario.

Mrs. LeBourdais: I did hear on this morning's news that there was a cloud of PCBs over the area. Now, once it is up at that stage, you can only hope that the wind takes it in one direction. Can anything be done at that point?

Dr. Chant: I would challenge that statement. I have not heard the news reports myself, but I cannot imagine how there could be a cloud of PCBs. PCBs are among the most inert organic chemicals there are, and that is part of the problem: they do not break down quickly.

Mrs. LeBourdais: I see.

Dr. Chant: They do not disperse into the atmosphere; they just sit there decade in and decade out, and that is your problem. So I do not know how you could have a cloud of PCBs, unless it were caught up in a general fire that had nothing to do with the PCB barrels themselves and they exploded; I suppose you could. But PCB half-life is something like 15, 16, 17 years, and that is why it is environmentally dangerous. So I do not know anything about a PCB cloud.

Your question about evacuation, I think, is a very good one. The only large-scale evacuation I think we have experienced in the province was in Mrs. Marland's bailiwick with the Mississauga chlorine spill. That, I think, Mrs. Marland, was an enormous success. It was well handled, as I understand it, thanks to the municipal people, I think, more than anybody else. We are required to build in the emergency procedures, if there were an accident in transporting waste to us or associated with our plant, that will include provisions for evacuation and that sort of thing. But I think, as you all realize—I am not trying to evade a responsibility; we clearly have a major responsibility—when all is said and done, evacuation procedures rest with the local municipal authorities. We would be servants of them and doing anything

they told us to do. We will provide them with the equipment they need in the event that there should be an accident associated with our plant, but the legislative responsibility lies with the municipal authorities.

Mrs. LeBourdais: I see. Thank you.

Mr. Chairman: Mr. Fleet, did you have a short supplementary on that one?

Mr. Fleet: Yes. It is also related to a question that was asked by Mr. Campbell. You have indicated that the Alberta kiln is not available for the burning of PCBs. I am not sure if you have really squarely explained why the Quebec kiln would not be available.

Dr. Chant: There is no Quebec kiln.

Mr. Fleet: I thought there was one under construction.

Dr. Chant: They have talked for many years about constructing a kiln. There is an old Tricil kiln in Quebec that could not possibly be licensed for high-chlorine PCBs; that is not in the picture. Mr. Lincoln, the minister, has told me that they are reviving the plan once more to build a rotary kiln in Quebec for all organic industrial wastes, including PCBs, and if they do, he intends to market that in Ontario to take some of the very lucrative PCB market in Ontario. That is fine as far as I am concerned, but they are a long, long way away; they are years away from establishing that kiln yet, because they do have hearing processes and they do have pretty rigorous environmental requirements now.

Mr. Fleet: As another aspect of the burning question, the process for disposal, I understand, has to be different if there is a high concentration as opposed to a low concentration. I am not quite sure why, as a matter of biology, physics or whatever particular science is applicable, it changes according to the density. I would have assumed that the process ought to be the same.

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Dr. Chant: It is the chlorine content, essentially. "PCB," as I am sure you know, stands for polychlorinated biphenyl. It is the chlorine molecules, the chlorine atoms, that are of the deepest concern from an air emission point of view.

Tricil's kiln in Sarnia, which is a perfectly respectable industrial waste kiln, is a fixed liquid injection; it cannot deal with sludges and solids. But also, because of the air emission technology that they installed, they are limited to burning waste with no higher than two per cent chlorine content. That automatically rules out PCBs. They are simply not equipped to handle it. It is the chlorine content and the degree to which you have to have the very best—and parenthetically, regrettably, the most expensive—scrubbing devices for your emissions before you can be permitted to deal with high-concentration PCBs.

There are other methods for dealing with very low concentration PCBs, say, one per cent PCBs. Hydro is now developing these. Dialysis machines are what they are really like. They take the oil out of transformers, strip the low-level PCBs away from them, return the insulating oil to the transformers and then break down these low-level PCBs into essentially water and obviously



chlorine. It comes out as table salt, water in table salt. But that will not work at higher concentrations. It will only work at the very low concentrations, and it is still in a developmental field.

Mr. Campbell: Dr. Chant, there are two other things that I think are of concern that perhaps you could deal with in your answers. The first one deals with the handling at the site by the employees. Obviously, it is a very highly concentrated dangerous waste situation when it comes to your plant, given what you said this morning about the sludges and the very nasty kinds of wastes you are going to be dealing with. Could you give us some idea of the kinds of issues for the employees of that plant who would be working there, give us an idea of how they are protected, given the high exposure to this?

Dr. Chant: I would be glad to. To begin with, there will be about 150 plant staff at the initial capacity of 150,000 tons, so we are talking about a significant number of people. The industrial hazards from the chemicals that we will be handling are not in the same order of magnitude as those involved in working in other kinds of chemical plants. The material we will be dealing with will not be as highly concentrated or as inflammable. There will not be any explosive material.

That said, we have worked over the years with the Ministry of Labour and the Ministry of Health here at Queen's Park on what will be required, and there are pretty straightforward procedures of showers and washing facilities, emergency showers, protective clothing, fail-safe operations with second levels of pumps and electrical switches and all of this sort of thing.

Also, as part of our arrangement with the European plant I mentioned this morning, as part of our contract with them through Von Roll, we will be sending our key supervisory and management floor staff, foremen and people like that, to the plant in West Germany for a period of weeks so they get on-the-spot training in how best to deal with these hazardous materials. Also, the plant managers from the European plant will come to our plant for several months when it is commissioned and advise us and supervise and monitor the way in which we are conducting our affairs.

I repeat again, there is nothing particularly magical about this particular aspect of the chemical industry, which is essentially what we are in, and generally the materials are considerably less hazardous in an immediate sense—not in a long-term environmental sense, but in an immediate sense—than those in a plant that might be making dynamite, cyanide, or chlorine for that matter, or making highly corrosive material.

The protocols for that are fairly straightforward. That is what I am really saying, and the Ministry of Labour and the Ministry of Health are keeping a close eye on us, I can assure you, and so they should.

Mr. Campbell: The comment you constantly hear is that all of the fail-safe—I shudder when I hear that word because we heard in the nuclear industry about how Three Mile Island could in no way happen, that it was a very theoretical exercise until in fact it did happen. I guess a parallel, probably a fairly close parallel, is the public perception of what all of this stuff is. They are not sure how it works, but they know that it can break down, human frailties being what they are.

I purposely asked that question, because one of the things that came out of some of those kinds of things in the United States with those nuclear plants was employee boredom. They were so overtechd that there really was not

a lot to challenge them. I am concerned about the programming of a workplace that allows that kind of variety so that you are not falling asleep at the switch, I guess literally, so that these get out of control.

Dr. Chant: I think it is certainly a legitimate area of concern. Again, I would point to the chemical industry. Over the last five years, the Canadian Chemical Producers' Association, CCPA, has come forward with manuals of operation for its member companies, of which there are about 68 in Canada, with respect to these kinds of things: how you protect workers in a hazardous chemical industry, whether it is waste or whether it is cyanide production, fairly straightforward techniques.

I think the difference between ourselves and Three Mile Island again goes back to the proven. Nuclear technology is not proven today, whether we like to recognize that fact or not. Every new plant is a new experiment in how you deal with these kinds of hazardous materials, and certainly Three Mile Island was an experiment of its own that was going well beyond the boundaries of proven technology at that time.

We have had a consultant, Battelle Memorial Institute, which has spent a lot of time going over our preliminary engineering designs and asking, "What happens if this valve fails, what happens if the guy falls asleep in the control room, what happens if the backup electrical switch shorts out?" and so on, "What are the worst hazards to which we are exposing the workers and the community?"

A tank farm fire is by far the most hazardous accident that could happen in this plant in the broader context. Certain devices have to be built into the design for that, with overhead sprinklers and all of this kind of thing. I think the possibility is something like once in 300 years, but nobody believes that anyhow. When you get that far out, it stretches the bounds of credibility, but that is what the calculations bring you out at.

I am not trying to denigrate the importance of this to the local workers, but I think the procedures developed by the chemical industry and by departments of health and labour around the world, but especially in Ontario, are about as good as I have seen. That is not to say that we do not have to be careful and be very cautious about human error, but there are procedures that try to do the best that anybody can do at this stage to protect the workers, ourselves, the community, from those kinds of accidents.

Mr. Campbell: My last point, then, is to deal with the trucking of these wastes to the site, given that this is perhaps the only site in this whole area, and that there may be an undue concentration of vehicles transporting this material to the site from wherever in Ontario, or other parts of Canada even, I expect. Is there any plan in this situation where you have a staging kind of operation so that you do not have 40 or 50 trucks lined up and waiting to off-load and then the drivers' shift ends and they leave the trucks unattended? It seems silly on the surface, but you can see how this can build up and how the residents of the area would have difficulties dealing with that massive concentration of potential problems before it gets treated. Can you comment on that?

Dr. Chant: Those are of deep concern to the local community; there is no doubt about it. I had a very interesting conversation with a gentleman up in North Bay two winters ago, as part of our around-the-province meetings, in a public meeting I held in North Bay. He is a trucker of wastes and is trying to arrange for some of the waste produced by North Bay's industry to be brought south and properly disposed of.



Mr. Campbell: That is a change.

Dr. Chant: His problem is how to get a load, and this is essentially the question you are asking. He gets a few 50-gallon drums every month, perhaps, but far from a truckload. Is he supposed to take his little pickup truck with a couple of drums in the back all the way down to West Lincoln? That is the question he asked me, and it is a very sensible question.

There are 28 transfer stations already in operation in Ontario. Most people do not know this, and often you will get protesters in a community expressing their concern about us and not even knowing they have a transfer station that already is dealing with industrial waste in their community. There is a big one in Mississauga, for example, that Tricil operates.

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In addition to those 28, there are about another 100 that are backyard operators who bulk up but in no way treat whatsoever. They might collect a number of drums until they have a truckload to send down from North Bay rather than send every little pickup truck down.

I think the real answer to your question is the 28 transfer stations and our commitment to working with the private sector to develop more transfer stations if the need is there. If you extend industrial waste production in Ontario up to Thunder Bay, you have a major problem. Manitoba, in building its plant, I am very happy to say, is trying to accommodate the waste generators in Thunder Bay which will be far, far closer to the Manitoba border than they will be to West Lincoln.

The truck concentration I mentioned this morning would add only about three per cent to the trucks already on that highway. That does not allay anybody's fears, but I think it does put it in context. There will be more trucks. There is no question about that. We have developed a procedure whereby a truck can come to us only by prior appointment. There has to be a contract with the waste generator, the trucking company and us.

Before we sign up clients, we go out and sample their wastes so that we know what treatment procedures are most appropriate for those wastes. Then the truck comes by pre-arrangement. It has to use the designated access route which is policed by us, I might add. It has to live up to certain equipment design standards, maintenance standards and certain standards of driver training.

It arrives at our gate and it is sampled again. If the waste in the truck is not the same as the waste we signed up for on the basis of the initial analysis, the truck is impounded by us until it is traced back to find out why it is different from what it should have been. If it does not live up to driver training standards, equipment maintenance or design standards, we will cancel the contract and that trucking company is out of work.

We have said from the beginning that we do not want to get into the trucking business. We do not see ourselves as a crown corporation of industrial waste trucking in this province. We have had many discussions with the Ontario Liquid Waste Carriers Association and the Ontario Trucking Association.

I guess they know the threat is always there. If they cannot deliver and cannot perform, then the government would have to look at other alternatives.

I am confident they can, especially when we are policing it. If they do not live up to their commitments, their business will be terminated as far as we are concerned.

Mr. Jackson: I have a supplementary on that point. If you are talking about the contract with the trucking firm and the source owner of the chemicals, how do you comply with the spills bill then? How do you figure into the spills bill? Have you analysed that or taken a position on that?

Dr. Chant: We would not take legal ownership of the wastes until they entered our gate, by and large, but I do not think that means we can shrug off responsibilities. Presumably, we will know better than anybody else in the province how to deal with a transportation accident.

Mr. Jackson: That is not my question. Mr. Chairman, if I may, I want to pursue this. We have one standard for the public, but a second standard for Ontario Waste Management Corp. I was unaware of that. Is it possible in this province or have you received a legal opinion—I will give you the example of the delivery of fuel oil to a home. If a fuel oil truck flips over, the liability is on the home owners in theory because they have already purchased the fuel oil.

Dr. Chant: That is right. We are not in that jurisdiction.

Mr. Jackson: You are able to subvert that.

Dr. Chant: I would not call it subverting it. We are not taking ownership until it comes through the gate. Therefore, the hauler and the generator legally would be responsible under the spills bill. But at the same time, as I tried to emphasize, we will have, among others—presumably the ministry—technological expertise and equipment that we can devote to cleaning up whatever kind of spill there is, over and above what our legal obligation is. Our lawyers say that if we do not take ownership until the wastes arrive at our gate, the situation is as I have described it.

Mr. Jackson: I know I cannot prolong this, but I really feel we should be looking at this a little more carefully. Could we get a legal opinion on it? I would like to have that looked into.

I know we are three to four years premature. However, if we as a province are going to set certain guidelines for the receipt of this material and if we are going to reserve the right to reject the material and send it back on the highway, presumably to go back to its source—

Dr. Chant: I did not say that. I said we would impound the truck if the waste was found not to conform with the manifest until the situation had been tracked back to find out the answer for the discrepancy.

Mr. Jackson: All right, I will not prolong it. Thank you for giving me the supplementary, but I would perhaps like at some point to pursue that with research.

Mr. Campbell: Just—

Mr. Chairman: I hope you are nearly finished. It has been over half an hour.



Mr. Campbell: Yes, I am. I realize a supplementary has been asked at the same time.

Just to clarify it, though, I was not concerned about the three per cent extra on the highway. I was concerned about the concentration at your plant gate, which is a vastly different scenario, I think, than was painted.

Dr. Chant: Believe me, I just underline what I said. It is all by appointment.

Mr. Campbell: I appreciate the clarification.

Dr. Chant: A truck is given a time to arrive, so it is all carefully staged. The hours of operation are from eight to five, I think, five days a week.

Mr. Campbell: Okay. I think the last point is that the bulk weight transfer stations—when I was on municipal council, I went through a very horrendous battle on that precise question of a transfer station in our area, and of course the people were riled up because they did not know precisely what was involved.

Mr. Chairman: Dr. Chant, perhaps for the committee members' information, you could give them a list of where the transfer stations are.

Dr. Chant: I do not have it with me, but we can give you a list of the 28 licensed transfer stations. The Ministry of the Environment presumably could do that as well. They are the ones that license them. We do not, of course.

Mr. Chairman: Perhaps we could have a list for tomorrow.

Mr. Breaugh: I always find it fascinating to go over transcripts of previous committees and the discussions they had. This is kind of dirty pool because they write down every word, but in June 1986 you were in front of the standing committee on resources development. I want to read one little quote from your opening remarks:

"I hope the final stage of the process can be completed this fall in time for our draft proposal to be reviewed by the public and by government agencies before the end of this year. This likely would mean that the formal public hearings under the Environmental Assessment Act would begin some time in calendar year 1987."

That is pretty close to the exact words you used this morning, except for the reference to 1987. What has happened in the last two years?

Dr. Chant: That statement was made at the time that on the basis of legal advice, we were advised to split our environmental assessment into two components, which the environmental assessment legislation on paper allows you to do. To oversimplify, the first part of the submission would have been on site selection and the basic criteria guiding the corporation and guiding us in the site selection. The second part, to come later, would have been the engineering design, the post-closure aspects that I was asked about and that sort of thing.

We came forward in January 1987, following that statement, with our part one EA and the ministry rejected that approach; not the assessment per se; it

never got to that point. They simply said, "We will not permit you to split the environmental assessment proposal into two component parts, even though the legislation permits a proponent to do that." So it was back to the drawing board at that stage to wait until we could consolidate and come forward with a single proposal. .

I am not criticizing. The ministry had the authority to do that. If I have a criticism, it is that I wish they had told us at about the time I was making that statement, rather than after we lodged part one of the environmental assessment in January 1987. But that is what happened and our plans for the hearings to commence in 1987 were thereby derailed.

Mr. Breaugh: So in two years' time, you got a legal opinion.

Dr. Chant: Our legal opinion is still that it would have been legal to do that, but also that it was within the ministry's authority to prevent us from doing that.

Mr. Breaugh: Was there anything else going on around that time that happened?

Dr. Chant: Oh, lots of other things were going on.

Mr. Breaugh: No elections called or anything like that.

Mr. Jackson: That would have been a false start. The third false start would be a provincial election.

Mr. Breaugh: Please do not tell us you are going to get another legal opinion or that you are talking to the ministry or anything like that.

Interjection.

Mr. Breaugh: Oh, I would love them to get legal opinions. It might even be a unique idea that at some time in the history of the world we cease getting legal opinions and actually do what we pretend we are supposed to be doing to the general public.

Let me move to a second part. You have alluded to it in response to a couple of questions. You said during those hearings:

"We have a mandate to look at, for example, the whole question of the transportation system that would bring industrial waste to this facility, wherever it may be, and to consider very seriously the possibility of establishing transfer stations in other industrial centres around the province to try to facilitate the transportation of waste and to provide a customer service to those industries that generate the waste."

Here I have to say that I see a little contrast from the previous answer. Not much has happened. In this particular instance, although you said before the committee that one of your mandates is to co-ordinate all of this, this one got off the mark pretty quickly. In fact, you have just said what I think some of us did know, that 28 transfer stations have already been set up, even though I am not aware that very much in the way of public process was established on that. I am not aware of environmental hearings around that. I am not aware that the public knew of it. Members of this committee did not all know of it. How is it that sometimes these things move so quickly?



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Dr. Chant: We did not set up any of the 28. They are entirely private sector, of course. Many of them have been there for decades.

Mr. Breough: Let me just stop you there. I did not make any allegations that you set them up. I quoted you that, "We have a mandate to look at...the whole question of the transportation system."

Dr. Chant: That is right.

Mr. Breough: That is what you said you had.

Dr. Chant: And I stand by that.

Mr. Breough: Have you reported to anybody about the setting up of these 28 stations?

Dr. Chant: Not of setting up the 28. They are there. We had nothing to do with setting them up at all.

Mr. Breough: We are not talking about setting them up. We are talking about your statement that you have a mandate to monitor the transportation system.

Dr. Chant: As I indicated, we will happily give you a list of the 28. It is a matter of public record. They are listed in our environmental assessment. There is no secret about it. In our environmental assessment, we met that commitment by including in the assessment document the procedures whereby, if necessary, we would establish additional transfer stations. Hopefully that process, not the specific locations but how we would go about it, will be approved as part of the approvals of the overall environmental assessment by the hearing panel. That is a component part of our proposal.

Our conclusion, though, following the work which that signalled, was that the 28 transfer stations that exist today will meet the needs of the corporation in the first several years of operation. If further stations are necessary, we would follow the process of finding additional ones and establishing additional ones approved by the hearing panel.

Mr. Breough: This has got to be the first time in the history of the Environmental Assessment Act that things like these transfer stations have been set up first and then we will have an environmental hearing on them.

Dr. Chant: Many of them were set up before the Environmental Assessment Act was passed in 1974.

Mr. Breough: That is true, and there were people dumping stuff all over the fields before the Environmental Assessment Act was passed. What I am looking for is that when you appear before a committee and say, "We have a mandate to do this," I think it is quite a reasonable assumption that part of that mandate is that you report in some way on your findings in that regard.

Dr. Chant: We have, with respect, in our environmental assessment. It is all there. I do not expect you to have read the 6,000 pages of the environmental assessment, but our conclusion of that study and the conclusions we arrived at about the capability of the existing transfer station system, the 28 ones, to serve our needs, is part and parcel of our environmental

assessment, and as I indicated, if at some future time we feel the transportation system has to be expanded, then the process we would use to find new transfer stations is also part of our environmental submission we made last February.

Mr. Breaugh: And the hope is that at some point there will actually be an environmental assessment on that report.

Dr. Chant: That is the basis of all the hearings which will happen.

Mr. Breaugh: In a decade, this has not happened, but the hope is that in the near future it will.

Dr. Chant: The only object of scrutiny of the hearing process is our environmental assessment and this information is all in there.

Mr. Breaugh: The more I look at this, the more I believe there is a chance that these hearings have already been held and no one was told about them.

Let me go on to another matter you raised almost in anecdotal form—in this case, I do not think it is particularly the details of it—about some guy who ran a dry-cleaning company and on his own initiative installed in his plant a piece of equipment that would cost him \$100,000. One of the things which occurred to me as I read that—you went through how this was a really good thing and it reduced his need for this chemical by 90 per cent, and paid for the equipment in two years' time.

It is the kind of thing we really like to see happen, the kind of thing an agency like yours ought to be encouraging, but it happens by accident, not by design. I do not want to paraphrase you, but I think it is reasonable to say you as much as admitted that in your testimony before the committee. Has your agency done anything which would make that happen on a more regular basis? Could you outline some of that for us?

Dr. Chant: We have; not in the dry-cleaning industry.

Mr. Breaugh: Well, wherever.

Dr. Chant: That is up in Sudbury. I think it was the Sudbury plant.

Mr. Breaugh: Yes.

Dr. Chant: I think the message he was able to give has spread. You do not have to go to Sudbury now to see a dry-cleaner that recycles its solvent. You just have to go to the corner of Yorkville and Yonge at Aspen Cleaners where the walls are of glass and you can see the recycling equipment in there. We have helped the private sector on a number of occasions to make that kind of development, but not by direct grant, which we are not enabled to do. The ministry does that; we do not.

There was one example in particular of a company in Port Colborne, I think, that had a new technology for dealing with a certain, very narrow stream of inorganic waste from certain industries. They wanted to move from the lab bench to a commercial demonstration project. We acted as a broker in a way, I think, in getting that entrepreneur together with the old Innovations Corp. which put up some money to enable him to go to a commercial demonstration project that proved to be successful. He then went to the



private money markets to finance his plant and he is happily in operation today. He says he could not have done it without our role in finding a source of upfront money to enable him to expand from the lab bench to the commercial demonstration project.

I think that is an appropriate role for us. It did not cost us anything except a little bit of time on my part and the part of our director of marketing to meet with Ian Macdonald and some of the people at Innovations Corp. I think it paid off handsomely. This guy is now treating this narrow stream of waste very effectively and making money at it. He has a lot of happy customers. I think that is a good example of an appropriate role for us to play.

I am of two minds whether the OWMC should have a mandate to make developmental grants in terms of money to industry such as helping out the Sudbury dry cleaner if he had needed it five or six years ago. I guess at this stage of our development I am more comfortable not having that mandate. The ministry has it and other government agencies have it in stimulating industrial development and these kinds of things.

I am more inclined to think ours should be an informational and getting the parties together role, rather than a direct upfront subsidy of the private sector. As I say, there are other agencies to do that and I do not think we would want to be in competition or duplication with them.

The dry cleaning one I still think, with respect, is a very interesting example of what can be done with ingenuity and this guy having the spirit of inquiry and willing to do it on his own. He does make the point that I may not have mentioned in those transcripts that now that he recycles his dry cleaning and has reduced his need for perchloroethylene produced by Dow, he still has at the end a highly toxic gummy residue that he needs us to comfortably get rid of for him.

Mr. Breaugh: Maybe the government should set up some kind of an idea corporation.

Dr. Chan: I am sorry; it was IDEA Corp., not Innovations Corp.

Mr. Breaugh: One final question: in the testimony before that committee, people were talking about your operating costs and how big a staff and things like that. In June 1986, you were talking about 150 staff people at an average of \$20,000. That would be a \$3 million payroll in that \$28 million operating cost. Do you want to update the—

Dr. Chant: It is still 150.

Mr. Breaugh: Are you going to get them for 20 grand a year now?

Dr. Chant: Well, you could uplate that by whatever inflation has done to salaries. Was that 1986?

Mr. Breaugh: Yes.

Dr. Chant: You could probably call it \$25,000 now, but it is still 150 employees. I suppose you would raise the payroll of the plant to \$3.5 million from \$3 million, something like that probably.

Mr. Breaugh: Are you indicating then that the nature of these

employees for that kind of money would not be highly technical, extremely well trained scientific staff.

Dr. Chant: They would run the range from groundskeepers, maintenance staff and clerical staff up to the professional staff, the technical people in the laboratory. That was very much an average figure.

Mr. Breaugh: For example, for the 150 estimated staff people, my impression, rightly or wrongly, is that this would be a rather automated procedure and that while there would be maintenance staff and groundskeepers and all of that, they would certainly be the minority and the bulk of the people who would be working in this plant would have to have a fairly sophisticated educational background and would be as much scientists as anything else.

Dr. Chant: No, it would not. I cannot give you the figure offhand but I would think that for people with a professional degree as a standard, there would be probably six or eight in the laboratory and probably six or eight in the plant in management positions. Below that, there would be some trained technicians who might have taken a community college course or some kind of course like that.

The rest of the people would have about the level of training that you would find in any chemical plant; probably unionized staff, although that is not certain. We exercise no guidance or control over that, naturally. These would be trained people but not people with degrees, I would say, and therefore not professional staff. I think the professional staff might be as high as 20 or even 25 in that 150, and some secretarial staff and people of that nature as well.

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Mr. Breaugh: I think with those estimates, you had better hope there are no unions involved in this. I think you are going to have some problems.

I would like to get into some of the financial matters, but it might be advisable to do some of that tomorrow, as that may take a little while. I do not want to use up the rest of the committee's time this afternoon.

Mr. Chairman: I had one question that I know was asked and has not been answered. The question was with regard to the daily number of trucks that would be entering the site. Any estimate of that?

Dr. Chant: Approximately 90 over the period from eight o'clock to five o'clock.

Mr. Jackson: Is that coming or going?

Dr. Chant: Coming, washed and going. That would include the cement trucks with the bags of cement for the solidification process and reagents used in the treatment process. I think about 80 per cent comes down Victoria Avenue and the rest comes from the back, from Welland, Fort Erie, Dunnville, in that general area.

Mr. Chairman: Before Mrs. Marland starts, I just want to recognize that we have a past member of the Legislature here who came in to watch her son ask some questions today. The son has left and the mother came. Welcome, Mrs. Campbell.



Mr. Breaugh: Maybe we could have Mrs. Campbell sit in. She used to do a pretty good job in these committees.

Mr. Chairman: Mrs. Marland, you are next.

Mrs. Marland: I am hoping that my questions are going to get fairly fast answers, Dr. Chant, because I have a lot of questions.

Dr. Chant: I will do my best.

Mrs. Marland: If we both agree to limit our preambles, we will get through a little bit more.

Mr. Breaugh: It is not off to a good start.

Mr. Chairman: That would be the chair's observation, if we could have both short answers and short questions.

Mrs. Marland: Earlier this afternoon, in answer to one of the questions of my colleagues, you said there were no PCBs being destroyed in Ontario today. For those constituents of mine who live adjacent to the decommissioned Texaco plant in Port Credit, who recently had some concerns because there was a mobile destruction unit there destroying PCBs, that is a contradictory statement. I wondered if you could elaborate. Is it the fact that only low-level PCBs, less than whatever it is, 10,000 parts per million, were being destroyed in the mobile facilities, which would still mean that PCBs are in fact being destroyed today in Ontario?

Dr. Chant: I was not aware of the use of a licensed mobile low-level PCB unit yet in Ontario. I did not know about the Texaco development.

Mrs. Marland: There are four companies in Ontario today that are licensed as mobile destruction facilities for PCBs.

Dr. Chant: Are you sure they are licensed, or have they applied for a licence and are doing test operations?

Mrs. Marland: No, there are four.

Dr. Chant: Okay, I did not realize that. The only one I am aware of, aside from the American ones and the Smithville situation, is the arrangement that Ontario Hydro has with a private company called Rondar for one of these dialysis operations. That one I do not believe is licensed yet.

Mrs. Marland: It is amazing that you did not know there are four licensed today.

Dr. Chant: I do not know everything, Mrs. Marland.

Mrs. Marland: No, but you must have a fair staff with the budget you have.

Dr. Chant: I expect my staff know that, but I do not know it.

Mrs. Marland: Mobile destruction of PCBs is a very important area, so I would suggest that the statement is correct, that there are PCBs being destroyed today in Ontario, albeit in the class 2, low level, less than 10,000 parts per million.

To your knowledge, do all the current PCB storage sites meet the requirements that were outlined in the Dillon report?

Dr. Chant: With respect, that is not my mandate. I am not a policeman. I do not apply the regulations and the laws that the ministry does and I really do not think I can answer that question. It should be addressed to the Minister of the Environment (Mr. Bradley) or his officials.

Mrs. Marland: So your mandate is not to know what it is that you are going to be dealing with in terms of volume?

Dr. Chant: Indeed, we know the volumes, but we have not been asked to make a judgement on the adequacy of the licensed PCB storage facilities in Ontario. We know how much is there, but it is not our mandate to police that system.

Mrs. Marland: Your mandate is to act as a conscientious and prudent manager of public funds and if public funds are being used to store PCBs in unsafe conditions, I would have thought that might have been something you might have been concerned with.

Dr. Chant: I have to emphasize again, we are not policemen. We have not taken on in this province all issues related to industrial waste, including the application of the laws of the land. That is well beyond our mandate as legislated by the Ontario Waste Management Corporation Act of 1981. That is a ministry responsibility, not a OWMC responsibility.

Mrs. Marland: In your annual report of 1986-87—and there probably is a more recent one than that, but this is the only one that is in our material—I do not see any reference whatsoever to one other focus of your mandate which is: "To diversify our activities so that services such as mobile treatment, the four Rs program and laboratory services will further reduce the volume of hazardous waste requiring offsite treatment." There is no reference to that very important part of your mandate in your report.

My question is, since we all recognize that the four Rs are going to be the only solution to all waste management, including hazardous waste management, could you tell us what OWMC has done for \$70 million and seven years of time with regard to the four Rs? Also, why have you not asked the government to institute mandatory recycling?

Dr. Chant: My copy of the annual report referred to has some discussion on page 8 of our activities with respect to waste reduction. So it is not ignored in that annual report.

As to why we have not asked the government to introduce mandatory recycling, again, I do not think that lies in my mandate any more than it does in yours or in Pollution Probe's or in that of any person on the street. We were not set up to tell the government what it should do with respect to recycling laws or garbage laws or any other kinds of laws. I have to emphasize again, we are not legislators and we are not policemen.

We have two very active programs, I think, in the waste reduction four Rs area that I alluded to in my introductory remarks.

We have, first of all, the laboratory service that we operate under a joint venture contract with Zenon labs in Burlington, whereby we offer waste identification services to industry, in large measure I think to build up our



own knowledge of waste characteristics from a treatability point of view, but also to provide a service to industries if they feel they cannot get it from anywhere else, to learn more about their waste and the waste reduction and waste recycling opportunities.

We have a staff of four professional engineers who go out to plants every working day of the year, working with the foreman and the plant manager, to analyse their production processes, to do a waste audit of resources into the plant and product and waste out of the plant. I mentioned our Industrial Waste Audit and Reduction Manual, which has become a very popular item in industry in this province. It is a handbook as to how each industry can conduct that kind of waste audit on its own behalf, looking for opportunities for waste reduction and waste recovery.

Third, we cosponsor with the ministry the Ontario waste exchange program in conjunction with the Ontario Research Foundation. They do the work and the ministry and OWMC pay for it. They have brought together literally hundreds of waste producers with companies that can use those wastes for some productive purpose. We have been very active in those areas over the last couple of years and we plan to continually expand that part of our activities in the future.

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Mrs. Marland: It is true, Dr. Chant, that you are not legislators or policemen, but if you see active programs within the scope of the four Rs, would it not be a commonsense part of your mandate, through your expertise and the expertise for which you have paid professional fees, to make those recommendations to the ministry?

I understood the very reason that you were established was because the ministry did not have the expertise. One of the reasons they wanted to have a crown corporation responsible for waste management, as the name denotes, was in order that there would be obviously an education/information flow, and if something was learned along your \$17-million, seven-year journey, you might have made some recommendations to the Ministry of the Environment.

Dr. Chant: We have almost daily meetings with professional technical staff in the ministry and have discussed recycling, waste recovery and waste exchange with them on innumerable occasions. I think it is fair to say that the technical staff of the ministry would agree with us and would agree with you, Mrs. Marland, that more can be done in waste reduction and waste recovery in this province.

Having said that, and sharing our expertise with them, I think it is fair to say that had it not been for our participation in the Ontario waste exchange program, the ministry would not have joined it. They joined it about two years after we got it going with ORF. I think that is a tangible result of the interactions we have had with the ministry.

Our views are well known. I do not think there is any conflict at the technical level about the desirability of doing that. But I really question whether it is in my mandate to publicly make recommendations and representations to the government of the day that it should do thus and so beyond the mandate of the OWMC as stated in the OWMC Act. We have made our views felt. We have had many discussions ranging from the deputy to his technical staff. There are no secrets involved here.

I hope you will forgive me, Mrs. Marland, but I am going to paraphrase

you. I do not think that I, as chairman of the Ontario Waste Management Corp., should get up on a soapbox somewhere and lecture the government on what its legislation should be with regard to mandatory recycling.

Mrs. Marland: Well, I am not going to belabour the point, but it certainly says very clearly that your activities include services such as the four Rs and towards the goal of reduction in the volume. The waste exchange is just that: it is reuse, not reduction, which is one of the four Rs and is commendable, but it is only 25 per cent of the four Rs.

Dr. Chant: I am trying to explain. The technical staff of chemical engineers that we send out to plants to look at waste reduction opportunities from the plant processing and production line point of view—I think everybody would agree is where we have to start.

But I think when it comes to opportunities to change waste, if there is a zinc powder produced by some metal finishing industry, it is far better to send it to somebody who can melt down that zinc and use it in some other productive product than to put it down the sewers or put it in the local garbage dump. I hope we would all agree on that too.

Mrs. Marland: I would like to go to your financial situation. If you have a copy of the submissions that we have, I am looking at page 10 under "Budget and Finance," which lists the total expenses of the Ontario Waste Management Corp. in the last three years. Before I get into the figures—

Dr. Chant: Just let me find the page first.

Mrs. Marland: It is page 10 of Mr. Yeager's original overview. Under item (c), do services include lab fees, soil testing, drilling and professional fees?

Dr. Chant: I would not say lab fees. I am not aware of lab fees that we have paid, but there are certainly professional fees, yes, with all of the professional consulting firms, the soil testing, the engineering design, all of the contract work done by our engineering and technical consultants.

Mrs. Marland: Okay, that is what I wanted to establish. So it is all contract professional fees outside of your own staff?

Dr. Chant: No, we have to make a distinction, and maybe we will get to the staffing numbers later on. We have a substantial number of our professional staff who are on contract with us—a one-year, two-year or three-year contract—as distinct from taking them on as full-time, permanent, continuing employees, to maintain our flexibility.

The payments made to those contract staff would be included in item (a) under salaries and benefits. Item (c) is entirely the funds used on contracting with consulting firms: hydrogeology, engineering, socioeconomic, risk assessment, this whole host of professional areas to whom we have contracted the work out, not to individuals, but to companies.

Mrs. Marland: That is what I had thought. Under salaries and benefits, between 1986 and 1988 there is an 18 per cent increase from \$2.7 million to over \$3 million. I wonder if you can explain why there is an 18 per cent increase.

Dr. Chant: Well, over a three-year period, if this were entirely



salary increases, that would work out to a fraction of under six per cent per year.

Mrs. Marland: It is a two-year period, according to my figures.

Dr. Chant: Well, 1985-86 is one year, 1986-87 is two years, 1987-88 is three years. There are three salary periods involved there. But the answer is that it is not salary increases per se. I think our salary increases have ranged between 4.5 per cent and 5.4 per cent over those years, a little bit less than the government's I might add. This is also due to the changing nature of our staff.

Mrs. Marland: What do you mean?

Dr. Chant: The average salary increases awarded to OWMC staff in those years have averaged between over four per cent and 5.4 per cent.

Mr. Bentley: It is 4.55 and 5.4 per cent.

Dr. Chant: The other answer, which I think is more substantive, is that the mix of staff has changed. Our professional staff has increased in modest ways over those two or three years. Also the mix changes, so that there are one or two of the more senior professional staff who I think came on during that period. That would also account for the \$350,000 differential between those two figures.

Mrs. Marland: I know one of the points raised by the Provincial Auditor in his 1986 report was about this question of salaries and salary increases. I want to get into that in more detail later on, because it deals with his concerns about certain practices. Even at that time, OWMC hired consultants, I think, to review the whole salary situation of your staff.

I do not have in front of me the Ontario civil service percentage increases in salaries in this period from 1986 to 1988, but I will ask if Mr. Yeager could give us those figures to compare them with the range Dr. Chant has just referred to, which is between 4.5 per cent and 5.4 per cent.

When you say that the salary budget has increased 18 per cent in that time because of the elevated level of professionalism and expertise of the staff of Ontario Waste Management Corp., could you tell me, for example, what the salaries are of the four people who are here today?

Dr. Chant: I am making a calculation at the moment. I do not know where you get your 18 per cent. I work it out to 11 per cent. That is \$320,000 on the 1985-86 base of \$2,711,000 to \$3,026,000 in 1987-88. The differential is \$320,000-odd; 11 per cent is what I make it.

Mrs. Marland: My figures are nine per cent between 1986 and 1987 and another nine per cent between 1987 and 1988.

1540

Dr. Chant: We are obviously using different arithmetic then.

Mr. Bentley: It is 11.8 per cent.

Dr. Chant: Yes, 11.8 per cent is the differential between those years.

Mrs. Marland: I had these percentages worked out for me by the staff with our committee. They are not my personal figures.

Dr. Chant: Well, Mrs. Marland, 27 divided into 320 is 11.8, and I cannot change that arithmetic.

Mrs. Marland: We will reconfirm it for tomorrow.

Dr. Chant: Fine. The salary ranges of the individuals with me today— And I will start off by saying that I cannot quote you the exact amount of their salaries.

Mrs. Marland: Could they quote their salaries?

Dr. Chant: We will ask them in a moment. The salary ranges were provided under the Freedom of Information and Protection of Privacy Act, which is required by that particular legislation. I do not know whether they are part of your record. Are they?

Mrs. Marland: I have not found them.

Dr. Chant: We would be happy to provide those salary ranges which we have already provided to the public.

Mrs. Marland: Could you answer the question?

Dr. Chant: Here is Mr. Scott.

Mr. Scott: This information was asked for by the editor of the West Lincoln Review under the Freedom of Information and Protection of Privacy Act last April, and I will quote to you what we gave her at that time. We gave her the salary ranges for the four managers' positions and an indication of where we are on the range.

For my position, the salary range starts at \$63,600, the midpoint is \$79,520, and the upper limit is \$95,430. I might add that that range is the same for all of the senior managers: myself, Mr. Bentley and Mr. Lightowlers, whom Don mentioned earlier. We indicated to Mrs. McEwan that it is the corporation's policy to have employees at or about the midpoint of their range, or as close as possible to it. My salary right now is in the early eighties. I cannot give you the exact figure, because I do not have it with me. I would be happy to, but that is approximately where my specific salary is right now.

Mr. Bentley: As Michael said, the salary range is the same, as it works out for our job evaluations. The exact figure I would have to look at, but it is past the midpoint of that range. I can give you the exact figure if you want it.

Mrs. Marland: I do not need it exactly, but what is your salary?

Mr. Bentley: You want to know exactly what my salary is?

Mrs. Marland: I do not need it to the dollar. I am just trying to get a picture.

Mr. Bentley: The midpoint of the range. Michael, do you have that?

Mr. Scott: The midpoint of Mr. Bentley's range is the same as mine,



which is \$79,520, on the basis of the 1987 salary ranges. I do not know exactly where you are on the range, Lorne, but you are at about the midpoint.

Mr. Bentley: I am past the midpoint in the range.

Mrs. Marland: You are in the mid-eighties, then?

Mr. Bentley: The upper eighties.

Mrs. Marland: Thank you. Your executive assistant?

Ms. Austin: My salary range is \$41,010. The midpoint of that range is \$45,570. The upper limit is \$50,130. I am at the bottom of that range.

Mrs. Marland: Thank you.

In looking down the road to where we are going to be with the operation of the corporation facility another three or four years from now, I noticed that in the material we have before us—and in this case it is some research done by Mr. Yeager using some background material that was put out under the Ontario Waste Management Corp.'s corporate strategic plans—there is a very serious statement made. It says: "The cash flow deficit projected for our first year of operation is \$14.7 million. This amount is required to cover policy expenditures of \$4 million and operating requirements of \$10.7 million."

In that cash flow deficit of \$14.7 million, when this facility is up and running, is there covered in that the payment of the mortgage? I do not know if "mortgage" is the right term, but obviously there has been a reference to financing the debt of the facility and that that is going to be amortized over 20 years. Does that \$14.7 million cover the annual operating costs of the facility plus the costs of the capital investment?

Dr. Chant: The amortization costs of the capital. Yes, it does.

Mrs. Marland: Does that tell us that it is going to cost a minimum of \$14.7 million a year just to have the plant there?

Dr. Chant: No, that is in the first year of operation before the plant is up to full capacity. It would reach full capacity, I think, in between the third and fourth year at 150,000 tonnes per year. You do not fill up the plant the first day, obviously.

It is not until we reach full capacity that we would reach our full earnings potential. That would be in the fourth year, at which time we would require no further funds from the provincial Treasurer. We would be living on our revenue at that time, including the amortization and repayment of the capital costs under whatever provisions cabinet eventually adopts.

Mrs. Marland: You are saying it will be break-even in three or four years' time, after it starts off?

Dr. Chant: Yes.

Mrs. Marland: What does that mean? Under which conditions that cabinet adopts?

Dr. Chant: The whole question of the capital cost recovery is the subject of a document that is being prepared by the ministry at the present

moment. It has not yet gone to Management Board and has not yet gone to cabinet, but it will include in it presumably the period of time and the interest rate over which the capital would be amortized.

I have used 20 years and five per cent, imputed. That has not been approved by cabinet, and I am not even sure—it is not my responsibility—that this will be in the cabinet document. But that is the basis for our discussions with the ministry officials as they work to develop this document for cabinet some time this fall.

Mrs. Marland: Is this break-even in three or four years when the plant is operating at full capacity? Are you saying, then, at the moment, that that break-even is not including the capital costs?

Dr. Chant: No, it does include those. That \$14 million in year one includes the first year of capital cost repayment to the government.

Mrs. Marland: Yes, I understand that, but I do not understand waiting for the cabinet to review and make a decision on the amortization of the 20 years. Are you saying that the cabinet may decide that it has to be paid off more quickly?

Dr. Chant: The cabinet certainly has the authority to decide that. I think I could say that that would not be the advice, as I understand it today, of the ministry officials, but cabinet could require of us any conditions that they want to lay on us. It certainly lies within cabinet's mandate to do that.

But the discussions we have had with the ministry would be consistent with those figures that I have given you. If the capital had to be repaid, let's say, in five years instead of 20 years, then obviously the break-even point would shift out into the distance because of that additional financial obligation.

Mrs. Marland: In this statement of the \$14.7 million, obviously because this was published in 1988, could you tell me if that \$14.7 million is 1988 dollars or 1992 dollars?

Dr. Chant: That is 1987 dollars, as is our capital cost estimate.

Mrs. Marland: Can you tell me what the first year of operation will cost in 1992 dollars?

Dr. Chant: If you could tell me how much inflation there will be between now and 1992, I could answer your question. If inflation is 10 per cent over those three or four years, then that figure would go up by 10 per cent. The only thing that we are aware of and have built into that plan that would adjust that figure or cause it to be adjusted would be the impact of inflation from 1987 dollars to 1992 dollars.

Mrs. Marland: When you were talking about a five-year plan and looking at a projection in financial terms, I am sure that the experts on your staff projected what the real figures might be in 1992 dollars.

1550

Dr. Chant: I am not aware of any economist anywhere in the world who can tell anybody what the inflation rate will be in 1992. We have made certain assumptions, I think around five per cent, and that is built into our



calculation. If inflation is eight per cent, the figure is higher. If it is three per cent, then the figure is smaller. The science of economics, in which I am not an expert, cannot make predictions that far in the future, but we have stated our assumption, which I think is straightforward.

Mr. Bentley: I just might add to that, if I may, that the assumption for the operating cost increases would also reflect in the revenue-generated increases too, so it is not unreasonable to think, in terms of 1987 dollars, to do a projection out 20 years. You can make the assumption that the percentage increase in your operating cost will be passed on in the revenue line.

Mr. Fleet: If I can ask a supplementary question on this particular point, as I understand the projections that would have to be made, when you talk about inflation, it is not a general rate of inflation but rather the rate of inflation in the field in which you are spending your money. If in your capital expenditure area, concrete or whatever, that inflation rate is different from the average, that is the relevant factor.

Dr. Chant: And employment salary increases as a consequence. You are quite right.

Mr. Fleet: Salaries in a given field. At least as I understand the practice, the model that one might use in any construction process does not relate to the general rate of inflation. Even if economists project it, they do it on a more complicated basis than that. If I am wrong in my understanding I would like you to correct me, because when you mentioned 1987 dollars before, my working assumption was that you were talking about the construction industry. If you ever went to work out an inflation factor, you would have to go to something much more complicated than what the people think the average rate of inflation will be according to the consumer price index, for example.

Dr. Chant: I think that is perfectly right. The big components would be the reagents going in, including concrete; specialized fields, specialized consequences of inflation; the effects of inflation on the 150 staff in the plant; and then the costs of repayment of capital with whatever interest cabinet ultimately decides upon. I have indicated that our planning figure is five per cent, but that certainly is not binding on cabinet. Cabinet can make its own decision, and it undoubtedly will. But you are right, it is a complex thing.

Mrs. Marland: I am just wondering why, knowing that inflation is not going to drop below a certain figure—I think all of us well understand that economists cannot predict what it may change to on the upper end—in looking at a five-year program when you are talking about something as critical as your projection of your operating costs, you would not put this \$14.7 million in the dollars of the year that you are hoping to be operating.

Dr. Chant: My only answer as a noneconomist is that that is not the way the profession works. They state the year dollar base, which we have stated very clearly. They state the assumptions on which that is calculated, and we have assumed a five per cent rate of inflation over that period of time, as Mr. Bentley has indicated. That is the way these projections are made.

Mrs. Marland: But this projection is dated 1988 to 1992, or 1989 to 1993, and it is 1987 dollars. It is not even in 1988 dollars.

Dr. Chant: That is the year when we did the projections. There is

very little point in updating it each year, it seems to me, until we get closer to the date of actually opening the plant and putting it into operation. From that base, anyone can make his own assumptions as to what the effects of inflation are going to be. They may or may not be the same as ours, but we have stated what ours are, which I think is fair ball.

Mrs. Marland: I think when we are looking at the cost of where we are going and where we have been, this \$14 million or \$15 million and whatever it will be—\$16 million or \$17 million, obviously, by the time we get there—that has to be a front-end loaded, a very heavy amount. When we are talking about the options of whether we should really be continuing or thinking about alternatives from where we are now and, as I said this morning, whether it is now the time to be very serious about encouraging the private sector and not investing more money to the extent we have already invested, all of those things have to be balanced and weighed, I recognize, but when we are doing it, we have to do it in real dollars and in real terms.

Dr. Chant: May I just make an interjection? I think the point Mr. Bentley made is a very important one. As inflation affects our costs, it will also affect our revenue in the same ratio. If your \$14-million shortfall before the plant comes up to capacity is X, then the revenue will be adjusted by inflation as well to cover that gap. The difference between revenue and expenses should remain the same, even though the dollar figures rise up in tandem over that period of time. I think that is an important point.

Mrs. Marland: It is also true that your construction costs will rise up in tandem.

Dr. Chant: Of course they will.

Mrs. Marland: What is your salary now and what was it in 1981?

Dr. Chant: In 1981, I have no idea. I can provide that figure. At the present moment I have no salary range, or I would give you my salary range consistent with the answers that we have provided under the Freedom of Information and Protection of Privacy Act. My salary is \$112,000.

Mrs. LeBourdais: Just to go back to the issue of acid rain, I am just wondering, for those areas in fairly close proximity to the US border, in view of the lack of action by the Americans on the issue of acid rain, is whatever we are trying to do, are all those things negated by the fact that the Americans are doing so little and their emissions are hitting our area of the country? Does it become counterproductive for us to attempt to do anything?

Dr. Chant: You are not asking me as chairman of OWMC. I will respond as Don Chant. No, the things that we are doing are not inconsequential; 50 per cent of acid deposition comes from Canadian sources, so we at least control our destiny to that extent. We can take care of half of the problem. But at what time or with what vigour the Americans will take care of the other half of the problem, given the Detroit incinerator and things like that, I think is a very legitimate area of concern that lies more or less beyond the powers of the province, except as working through the federal government.

Mrs. LeBourdais: But in saying you are doing 50 per cent of the cleanup, if that remaining 50 per cent of the problem comes from the United States dumping on the same tree, does the tree not die?

Dr. Chant: Well, it dies more slowly, I guess, and that is not a



very reassuring answer. I think the Ministry of the Environment—and I am not fully up to date with all the details—has registered as an intervener, a party to the hearing process for the Detroit incinerator, for example. I think that is an example with respect of how not to go about an incineration issue.

It is a garbage incinerator. I made the point this morning that those are different from the kind of incinerator we are talking about, but Detroit is prepared to pay \$450 million for a garbage incinerator and is balking at an extra \$20 million to install the proper scrubbing devices. To me, that is a terrible example of false economy. That is what the issue basically is revolving around. The ministry, as I understand it, has indicated that it will take part in the legal proceedings that lead up to the approval or rejection of the Detroit garbage incinerator.

Mr. Chairman: I want to thank you for appearing before us this afternoon. Tomorrow morning at 10 o'clock we shall resume our deliberations. I am sure the committee members will have more questions for you at that time. The committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 4 p.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:  
ONTARIO WASTE MANAGEMENT CORP.

THURSDAY, AUGUST 25, 1988

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Substitutions:

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LeBourdais, Linda (Etobicoke West L) for Mr. Black

Marland, Margaret (Mississauga South PC) for Mr. Runciman

Clerk: Deller, Deborah

Clerk pro tem: Arnott, Douglas

Staff:

Yeager, Lewis, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Waste Management Corp.:

Chant, Dr. Donald A., Chairman and President

Bentley, Lorne K., Director of Administration and Finance



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday, August 25, 1988

The committee met at 10:08 a.m. in room 151.

AGENCY REVIEW: ONTARIO WASTE MANAGEMENT CORP.  
(continued)

Mr. Chairman: We will call the committee to order. I believe there is a quorum here. This is the standing committee on government agencies, dealing with agencies, boards and commissions. We still have before us the Ontario Waste Management Corp. I know Dr. Chant has a small opening statement he would like to make pertaining to some of the questions that were asked yesterday. After he does that, then we will go back into questioning.

Dr. Chant: I have three points in response to questions and issues that were raised yesterday. The first is that I have for distribution to your committee members the full list of transfer stations that are operating in Ontario with industrial waste. There are some 89 or 90 on that list—I mentioned 28 yesterday—and if you draw a line under the 500,000-kilogram capacity, those above the line are the 28 I was referring to. The others are much smaller.

Mr. Chairman: We will have the clerk distribute them, if you have copies of them.

Dr. Chant: Yes, we do.

Second, Mr. Chairman, I think you yourself asked me yesterday if there were any suggestions that OWMC might have for speeding up and simplifying the environmental assessment approvals process. I did not give it too much response yesterday, but there are two points that I would like to make very briefly.

One is that one of the bottlenecks in the process seems to be the turnaround time for the Ministry of the Environment review. I am not being critical about that—they are very hardworking and dedicated people—but I do wonder from time to time if the staff of the environmental assessment branch, which has to review all environmental assessment documents, is adequate to the task. There are now dozens of environmental assessments per year, ranging from enormous ones like ours and the forestry one, which we are all aware of, to quite minor ones. Many months go by as these people work very hard to review and return the documents. I just wonder if they are adequately staffed. I know there are many priorities, many demands on the ministry, but it is a question I have had for some time.

As a more general comment, it seems to me it would be helpful if there could be clearer guidelines as to what a proponent must do to meet the requirements of the Environmental Assessment Act and to come forward to the public hearings with documents that are completely adequate. In general, I think some thought might be given to giving more guidance to proponents as they are doing the work over the years to prepare for this particular challenge.

Third, there was some discussion yesterday of emergency response, particularly in the context of transportation and things like that. I neglected to tell the committee yesterday that last spring we put together a working group of all the emergency response officials in the 12 or 13 communities that make up the region of Niagara, working with our operational staff to make sure that the whole question of authority and backup, technical expertise and equipment for any conceivable emergency is adequately dealt with long in advance of the plant actually going into operation. They have been very co-operative in working with us on that.

Mr. Chairman: There is one clarification I was looking for. There was a question yesterday, with not a lot of follow-up on it, that had to do with the spills bill and how it affects your corporation.

Dr. Chant: We have a memorandum coming up this morning, to be delivered to me here in the room, which I will speak to when it comes. Briefly, the point I tried to make yesterday, I think in response to Mr. Breaugh's questions, was that under the spills bill—rightly or wrongly, but this is the way the act is applied—the transporter of the hazardous material, whether it is a hazardous product or a hazardous waste, has the primary liability under the spills bill. The secondary liability is the generator's, the person who generated the waste or the hazardous material and entered into a contract with the trucker.

We are neither of those parties. I indicated yesterday that we do not intend to get into the trucking business. We are a receiver of waste. Over and above that, having said that we have no legal liability under the spills bill, I tried to emphasize yesterday that our expertise, our staff, our emergency response equipment and our ability to work with the various communities, through this working group that I have mentioned and others, are always there as a resource that can be called on by those who have the responsibility for emergency responses and for the administration of the spills bill.

Mr. Fleet: Essentially I guess my questions would be most accurately described as policy questions of a broader nature than perhaps some of the other ones that you dealt with yesterday. My understanding of the way the waste system is structured in Ontario is that there is a separation of jurisdictions. You went through in some detail what you are responsible for and what you are not responsible for.

Dr. Chant: You mean the garbage and the radioactive waste for which we are not responsible?

Mr. Fleet: That is right. One of the difficulties I have is in understanding the rationale in drawing the line between one jurisdiction and another. I can appreciate the radioactive, and I think most people can appreciate that quite quickly; it is a very easy thing to measure. On the other hand, I am not so sure that I understand the logic in determining that certain things fall into your jurisdiction and certain things are the responsibility of the municipalities.

My initial sense is that there is probably waste product that is handled by both groups that is of the same basic nature and where the problems relating to it are the same. I am wondering whether we would not be better off in terms of our long-term planning to focus in not so much on the current structures but rather on the nature of the waste and work backwards from that to establish who ought to be dealing with it best.



I have a number of probably related questions, but before I go too long, I think it would be of some help to this committee if we could have some outline about your understanding of the logic behind the division.

Dr. Chant: I would be perfectly happy and will respond, but as a layperson essentially, since we do not have any legislative responsibility for these other wastes.

Let's talk about the separation between what we call industrial waste and municipal and domestic garbage, if we can. That is a very long-standing historical matter in Ontario whereby the municipalities were given responsibility long, long ago for the garbage and domestic waste problems and the Ministry of the Environment and its predecessors for the hazardous industrial wastes.

There are definitions that were developed by the Ministry of the Environment and that are periodically reviewed as to what is a liquid industrial hazardous waste and other hazardous wastes. There is that list of definitions, both of particular toxic compounds and of compounds in their chemical composition and also whether they are solids or sludges. There is something called the slump test, which the ministry has developed over the years, that it applies to certain kinds of wastes. If it passes the slump test and is deemed to be a solid, then it is not a hazardous waste; if it does not and it is a liquid, then it is a hazardous waste. This is a very, very complicated area that OWMC has no responsibility for, but we are bound by those definitions in the same way that any industry in Ontario would be.

The historical fact is that garbage, rightly or wrongly, is a responsibility of the municipalities. Some of you will have read this morning the article in the Globe and Mail about what the Association of Municipalities of Ontario thinks about that in the resolution it passed at its annual meeting yesterday.

The gray area that is of considerable concern to OWMC is the contribution to what we look on as garbage from households and other sources of hazardous wastes that everybody would deem as being hazardous waste: the paint sludge from the can in your garage, the half-used insecticide can from your back garden, the half-used Lysol or lye that you might have used for your plumbing and things like that. Most of that today finds its way into garbage and, by any definition, I think we would all agree it is hazardous material that should not be in a garbage dump.

Some of you will be aware that the ministry and Tricil and other authorities have begun to organize household hazardous waste days across the province. I think that is a very positive response. I think a great deal more could be done to try to get these hazardous wastes to facilities such as ours and out of the garbage that really should not contain any hazardous material at all.

Having said that, there are always areas that will be difficult to deal with: plastics, for example. There are many, many plastics that go out in domestic garbage and into municipal waste dumps, and that has always worried me. Plastics do break down, very, very slowly at times, but they can be pretty nasty substances.

How you can get down to that level of fine-tuning to try to ensure that the more hazardous materials are kept out of the municipal garbage I do not know, quite frankly, but we have a keen interest in the household hazardous

waste activities that are now beginning to develop in the province, and when we have a facility, we hope to play a very active role with the people who are already working in that direction.

Mr. Fleet: I am glad your interest is keen, as mine is. My next question therefore is, what planning has there been to develop a strategy to tackle the problem, to deal at a household level with—what it boils down to, I take it, is a separation question and getting individual household separation. What plans do you have afoot to launch a province-wide strategy?

1020

Dr. Chant: Again, I remind the committee that we are not legislators and we are not policemen. I have several views on this, and in some areas we are actively doing work. The hazardous waste days have a strong element of convenience in them in the sense that the hundreds of local householders bring their waste to one central point, which makes the problem of pickup and transportation easier.

The notion of anybody going out house-to-house and soliticing these materials, I think, would boggle the mind, but I do think the time will come—I have said this on a number of occasions—that we get the blue boxes in Toronto or other communities. It seems to me a very logical separation. There are newspapers, which we are becoming accustomed to, and cans and bottles we are becoming accustomed to. Why not another one that has hazardous household materials?

There is an easy list to draw up that I think any householder would understand. Used cans, bottles, half-used ones and half-empty containers should go in that box. Then that box can go to a proper hazardous waste treatment facility rather than to recycling, which would not be possible, or to the municipal dump. I think there are positive things to be done when the time comes and we have a facility to be able to deal with these things.

Mr. Fleet: Implicit in what I am saying is that the time is now, if it was not the time in the past. It probably was the time in the past. There probably was a time in the past and we have been late getting off the mark.

What I am putting to you as a matter of policy is not so much whether you are legislators or not. I do not think that is the issue. The question I am putting to you is one related to a leadership role in terms of planning. It may be that the execution of the strategy ought to be by other agents. I am wondering why; there may be valid reasons. I do not know. That is why I am asking why we have not seen the development of a plan or the development of a strategy to take the role.

It seems to me that the expertise in the question of hazardous wastes, for instance, lies with your personnel. There may be other places that exist that I do not know about, but it seems you are expert.

Mr. Chairman: I would like to get you back on track, if I may. There is no point in asking these people questions about waste, the blue boxes and so on. This is the Ontario Waste Management Corp. we are dealing with. I know your concern is the same as that of all the rest of us, but he is not going to tell you today what he is going to do about garbage, because that has nothing to do with the OWMC.



Mr. Fleet: I do not think I asked about that. I asked about the hazardous wastes that happen to be disposed of in the garbage. Everybody, I think, concedes it ought not to be.

Mr. Chairman: That is a fair question, but that was not what I—

Mr. Fleet: If I was not clear enough, I hope I am clear now.

Dr. Chant: Perhaps I can interject and point out that the ministry has developed a grants program that is available to any municipality that wants to get assistance and financial support for developing its own hazardous household waste days.

Again, I go back to the frustration that I think I showed yesterday. There are no hands-on activities that we can do in this or other areas until we have our treatment plant. I think it is a legitimate question to ask. Where does the household hazardous waste go when it is collected today in the absence of OWMC facilities? It goes to Tricil in Sarnia. Tricil deals with it as best it can. I give them credit for doing that, but it falls somewhat short of the high level of treatment and disposal that we would be able to provide when we had our plant.

But I do not want to demean in any way the role the ministry is playing. Mr. Bradley has indicated that there is funding available to communities to help them with the hazardous waste day development that is beginning to happen across the province.

Mr. Fleet: I would then like to go to an adjunct of that problem. What I would wonder about if I were in your shoes is that if that starts to be developed, that presumably will produce a greater quantity of material to be disposed of, ultimately. There are a number of underlying assumptions about the lifespan of this proposed site in West Lincoln. I am wondering whether there has been any attempt to ascertain the extent to which developing other household means of identifying hazardous waste is going to affect the lifespan of the site.

Dr. Chant: It has already been built into our calculations. The tonnage from household hazardous waste is not large in the context of the tonnage of industrial waste generated in the province per year. We have built in a number of components in addition to what you might call the traditional industrial waste quantities that we have been able to estimate in our capacity and lifetime projections.

Another would be biomedical waste. At the present moment in the province, there are very inadequate facilities for dealing with biomedical waste. What is needed are refrigerated trucks and deep-freeze facilities at the plant prior to combustion. We will have the capacity and the ability to deal with biomedical waste. We have built that into our quantities projections. Whether we are given the responsibility for biomedical waste, which does not fall within the normal definition of industrial waste, would rest with the ministry.

Until we are closer to operation, I do not think they are prepared to make a decision on that. But the hospitals of this province are watching us with keen interest because they see us as the most favoured solution they can think of, rather than every hospital having to deal with its own biomedical waste independently through some kind of treatment facility.

Mr. Fleet: Just to clarify an earlier response you gave, is it fair to say that there has not been consideration given by your corporation about the traditional definitions of garbage and liquid industrial waste in the sense of saying, "Well, maybe we should be responsible for something we do not have now"?

Dr. Chant: When we started this job in 1981, one of the first things we did was look for an operational definition of industrial hazardous waste. There are a number of systems around the world. There are three or four, actually. We adopted one that was developed in the United States by the University of California at Davis and it is pretty well worldwide now. There are hundreds of categories depending on lethal dose—50 per cent, which is a traditional term—and toxicology, chemical composition, corrosivity, explosivity, flammability and on and on.

That list was much longer than the official government definition of industrial waste in the province at that time. Over the years of working together with the ministry officials, those lists are becoming very similar now. The list in the province is much expanded, and I think much more operational. It is now almost entirely consistent with our definitions. We have put a lot of time and money into drawing up our conception and getting the ministry's agreement on that conception of what wastes are on our plate and what wastes are not on our plate. I am quite satisfied with the result. There are these grey areas of the household hazards, which I spoke to, and the biomedical waste, which is still unresolved in this province.

Mr. Fleet: Has that movement by the MOE been reflected in the regulations?

Dr. Chant: Yes; as far as I know it has. I do not think I am the right person to answer that question in detail. It is reflected in a number of ways in the waybill or manifest system that controls the movement of hazardous wastes around the province on the province's highways. The definitions of what must come under the manifest system have been very much expanded and refined in the last six or seven years. I do not take claim for that. We were one of the players in that particular activity, and I think an important player, but the responsibility has rested with the ministry and I think it has discharged it quite well.

Mr. Fleet: Correct me if I am wrong, but as I understand the system that is in place in Ontario, it is something akin to the income tax system, where we are reliant on the honest declaration of the individuals involved to a very significant degree. We rely on people who produce waste to declare they have a certain type of waste and to deal with it according to the legal requirements applicable for each type of waste.

Dr. Chant: I think that is an oversimplification. Again, we are not policemen and we do not police that system.

Mr. Fleet: I did not say you were policing. I am just asking, is that not really what we are basing it on?

Dr. Chant: No. There is an element of truth in what you are saying, but there are a number of control points. If you take the manifest system alone, the generator of the waste has to register the waste under the new program that went into effect about three years ago, where all waste generators had to register their wastes with the ministry.



There are some 9,000 that have had to have their waste analysed and registered. There is a form they have to fill out. When they move that waste off the industrial premises, the trucker has to fill out the same form. It goes on and on. The destination that receives it also has to be licensed and has to sign off. So you would have to have three oversights, to be charitable, or three acts of omission, not to be charitable, before the system would completely break down.

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There is a maze of paper involved and the volume of work is very high. Again, I think one has to ask the question, does the ministry have the adequate resources to discharge that responsibility? I think it does a pretty good job. If you are putting your industrial waste down a sewer, you have to have the approval of the local municipal sewage authorities, and of course, the municipal-industrial strategy for abatement is moving towards greater control in that direction as well.

I am sure there are many errors of omission and there probably is some skulduggery going on in the system, but by definition, midnight dumpers are midnight dumpers and nobody knows about them. I think the system has certainly improved dramatically over the past 10 years. It is not perfect yet.

Mr. Fleet: Let's just step back a little bit to the explanation you were giving. You were saying there are three control points. Are you telling me that each of those individuals tests what is in the container they are dealing with?

Dr. Chant: The generator of the waste, under the new regulations, has to register the waste, whatever it is, that the industry generates, but no, there is no sample testing along the way. Nobody is stopping trucks on the highway and taking samples out of the tank and checking to make sure it is verified with the waybill. The administrative burden of doing that would obviously be very substantial.

There is an element of faith. On the other hand, most industrial processes produce very predictable kinds of waste. If you are in the manufacturing business of metal finishing, let's say, and making gears for General Motors, any industrial engineer can figure out very easily the kinds of wastes you are producing. You will be producing acids and caustics for finishing metals, and metal filings. It is quantities that would be important there and the quantities are controlled by the waybill system.

Every industrial waste generator has to have its wastes analysed by an approved laboratory, register those wastes, and then comply with the requirements of—it is regulation 309; I was groping for it—regulation 309 that requires all industrial waste generating industries in Ontario to have analysed and register the waste that is produced. But there is no spot checking along the highways, if that was the direction of the question.

Mr. Jackson: I am surprised you indicate there is difficulty with that. Currently, the Ministry of Transportation and Communications weighs the trucks as they are passing along our series 400 highways, etc. Given that 80 per cent of your chemicals, your market, is coming through the Queen Elizabeth Way corridor, why could we not investigate a checking system adjacent with the operation that the Ministry of Transportation and Communications operates for weighing?

All the capital expenditure is there. It would be the staff and necessary testing. When I get the floor, I want to talk about the transportation of hazardous goods, but on Mr. Fleet's very valid point, I am surprised that we are dismissing—have we dismissed the option of testing to ensure the authenticity of the waybill?

Dr. Chant: I think that question should be addressed to the ministry. We do not police the waybill.

Mr. Jackson: I did not ask that question. I asked if you were dismissing it in terms of your matrix of safety standards. You are in a position to advise the government that you feel that instead of your catching people at the gate and impounding their vehicle—I am sorry. This is a supplementary. I will not go into it in further detail, but I am not satisfied with the response that this is a matter for the ministry. I am surprised you are not counselling in that area.

Dr. Chant: I have two other comments, if I may. Yes, the weighing stations are available on our highways, as we are all aware. Even a spot check, fingerprint chemical analysis would require the installation of about a \$1.5 million laboratory at each weigh station. It would be a matter to be considered by the government. Second, there is the time. When we fingerprint a truck coming into our plant, that truck is going to be held for anywhere from 30 to 45 minutes while that check is run before we give it a clean bill of health, or if something is wrong, impound it.

I think the trucking industry would have something to say about 30-minute delays every time they were pulled over to have their truck weighed. The trucking industry has expressed those concerns to me. Those are some of the hard facts of life that would be involved in such a system—cost and time.

Mr. Fleet: I understood from yesterday, and again to the extent you have covered it today, how you are going to deal with trucks that end up at your facility. For the purpose of this series of questions, I am not worrying about that group. Hopefully, it is the vast majority.

What I do not yet understand—it may fall outside your current jurisdiction; I understand that because you say you are not a policeman—and what I am not quite clear on yet is whether there is any system in place anywhere that actually checks the source designation that is done by whoever has produced the waste. If for whatever reason they do not put the right label on it, other than if it happens to end up in your facility, do I understand that it is never checked by anybody under any circumstance?

Dr. Chant: If it ends up in our facility?

Mr. Fleet: Other than in your facility.

Dr. Chant: No. The waybill system I have indicated with the three essential components to it—the sign-off for shipping it out, the trucker signing on to receive it, and the ultimate destination signing off that it has got there—is a closed loop which is all computerized in the ministry. If the three essential tags do not match up, for example, if it leaves a plant and it goes to a truck and then it disappears—

Mr. Fleet: I am sorry; you are not describing the example I was



trying to get to. If it is given a label in the first instance that is different from what is inside the container, it is never again checked.

Dr. Chant: No. I think that is a fair statement. It is never again checked except if it goes to a treatment plant, such as Tricil today or a recycling plant such as some of the ones on the list I handed out this morning. They do their own checks because it is very much in their interest to know what the wastes are and that they are properly treating them. But if it went to the United States, for example, if it disappeared across the Bluewater Bridge, the loop gets closed in the waybill system because it is signed off at the border, but heaven knows what actually happens to it. If somebody is shipping PCBs to the United States and calling it cyanide waste, I do not think there is a check, if you want my blunt answer.

Mr. Fleet: That is what I was trying to ascertain.

Mr. Chairman: If I could have your attention for a second, I have about six others on the list. You have been about 25 minutes. I would be pleased to put you back on the list if you would be so kind as to let some others have a chance.

Mr. Fleet: I have actually only two questions left on somewhat different aspects of the evidence, if I could finish that off. I am mindful of your admonition for time.

Mr. Chairman: I just want it all fair and equal; that is all.

Mr. Breaugh: Let him go ahead and hog the whole morning.

Mr. Fleet: It is generous of you to allow somebody else some room.

Mr. Jackson: It is my fault for asking 24 supplementaries.

Mr. Chairman: If they are short questions, fine, but if they are going to take 20 minutes, I do not think it is fair.

Mr. Fleet: Another area I am interested in is the PCB storage you referred to at some length yesterday. Who set the guidelines? Did your corporation have any input at all?

Dr. Chant: We had input in the sense that there were the PCB hearings that were held under the aegis of the Environmental Assessment Board two summers ago under Mary Munro. She set the guidelines for PCB treatment. The guidelines for licensed PCB storage facilities were established by the ministry with advice from many people including ourselves. I emphasize that each of those PCB storage facilities—not on this list since these are commercial transfer stations—has been licensed.

General Motors, for example, has licensed PCB storage which is extremely well done and is regulated by the ministry, and many other industries across Ontario store them on their own premises waiting for adequate PCB destruction facilities to be available to them.

Mr. Fleet: On a somewhat different topic, you referred yesterday to a waste audit manual that you described as a best seller.

Dr. Chant: In the trade.

Mr. Fleet: In the trade. Do you know who that has been distributed to currently? Is there any sort of a list? The reason I ask is I am wondering, for instance, in my riding, would the industries all likely have received it. Is it still available? What is the cost if somebody wanted to get it?

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Dr. Chant: It has been distributed at the end of its first month to 400 industries, which is the last statistic I have and that would probably be April, but it has also been used as the agenda, if you will, for these workshops we have been holding across the province. There have been hundreds of industrial representatives at those workshops who have been exposed to the Waste Audit Reduction Manual, WARM; it is a nice acronym. It costs \$25, not because we felt we had to recover the cost per se of producing it—I think it is our responsibility to make that material available—but we were told by industry that if they did not have to pay for it, they would not take it seriously, so we charge \$25.

Mr. Breaugh: Is it not fair to say—

Mr. Dietsch: Go ahead; talk for the rest of the morning.

Mr. Breaugh: Yes, you can all go to sleep now.

This corporation poses quite a quandary for many of us. I do not want to belabour the point because I think others will probably do that for me, but in terms of looking at cost efficiency, the spending of public money, what we get for the investment that is made and who is paid what, this is kind of a toughie to defend, particularly in terms of the length of time. This thing will have been in business for a decade before we really see the facility all of us want so badly.

The temptation is surely there just to kind of kick you around a little bit and say, "Well, there is too much money going down the tubes here and you cannot justify this kind of public expenditure." The problem I have with that is that I still want the facility that was the purpose for creating this agency.

Let me see if we can explore a couple of other areas. First of all, you made mention rather briefly this morning in your opening remarks of a couple of things that might help get this thing done. What is there we could do that would make this a priority, so that this process has a foreseeable end to it and so that within our lifetime, we can actually believe there will be a facility set up and working that will handle this very difficult substance?

Dr. Chant: That is an excellent question. I think it is foremost in many people's minds. I would like to start by saying that I do not think we have unwisely spent money. The time we have taken I think has generally been devoted to living up to the requirements of the Environmental Assessment Act. I said all of that yesterday.

The fact of the matter is that with the environmental hearing requirements of this province, which I endorse—in fact, I had something to do with helping to write the regulations for environmental hearings back in the mid-1970s—the fact remains that with the best will in the world, which the Environmental Assessment Board, the ministry and many other people have been trying to accomplish by trying to get people to articulate their concerns early in the process so that they can be dealt with short of a witness stand,



under oath, with a high-priced lawyer conducting cross-examination, which tends to be the flavour of the hearing panel, no matter how much of that you do, one opponent in a hearing can drag it out for a year or two because of the way the system is set up.

It is a confrontational system. It is a quasi-judicial proceeding, with oaths, witnesses, cross-examination, resource staff and consultants and so on and so forth. I do not know the point where you throw the baby out with the bath water. Do you deny the one opponent his or her full day in court under the system? If you do, then I think we have a somewhat different society in Ontario than I feel we do have. If you do not deny that person, then I think to a large extent we have to bite the bullet and accept that these processes are going to be expensive, because our society has said that is the way we want them to be. They are going to take a lot of time. A proponent covers every chink in a proposal he is bringing forward and reduces any vulnerability to hidden surprises in that kind of setting.

That is not a very reassuring answer, but if the province says, as it clearly has, that we want an Environmental Assessment Act that is tough—I am not talking about the government; I am talking about the people of this province—and that we want our right as citizens to be interveners in that process, to have intervener funding and the resources to hire our own lawyers to challenge the proponents, then we are looking at time and we are looking at very high upfront costs on a proposal such as ours. It is not reassuring.

Mr. Breaugh: I remember when this agency was started and the buzz around the back benches was that we really have to do this and we have to do this so quickly we cannot afford to wait the two or three years that a full environmental hearing might take, so we are going to exempt them from the provisions of the act and set up a special thing. The end result is we could have had a 10-year-long hearing on this matter. We could have given out \$10 million a year in intervener funding and be precisely where we are now, and probably a little bit ahead of the process. What can we do that will get this thing done?

Dr. Chant: Mr. Breaugh's recollection is exactly correct, but you will also recall the firestorm of protest from the environmental movement in Ontario at that initial exemption of OWMC from the provisions of the Environmental Assessment Act. It was an intensely political process, as you will well recall, I think, and Pollution Probe, the Conservation Council of Ontario and the Federation of Ontario Naturalists went on and on—

Mr. Jackson: Even the two opposition parties.

Dr. Chant: And the opposition parties, of course, yes, at that time the Liberals and New Democratic Party. Yes, that exemption was a sensation in the newspaper, in the media and in the House. I think that was clearly an expression of the depth of public concern, and it is still there; there is no doubt about that. The protests over the northern logging issues, I think, demonstrate that.

Mr. Breaugh: Hindsight is a wonderful thing, and we certainly could have said that this agency will go through the toughest environmental hearing process the world has ever known. It will last for a decade, it will cost \$60 million and we will be right where we are now, with the noted exception that we will have had 10 years of hearings on the matter. In terms of throwing money away, I think we would be hard-pressed to find a better example of this.

Let me pursue a couple of other things that make me perplexed and frustrated somewhat by this process. I do not want to go outside your mandate. God forbid you should get turned loose on a lot of other things. But within your mandate, you yourself have noted that there are some things which you are now doing that you consider to be part of your mandate. There are some things that really do need to be done.

Many of us who have an interest in this cannot help but compare what we see on paper coming from the ministry, for example, as being the current rigorous standards for the storage of hazardous waste, with what we see on the ground when we walk around in our own constituencies and see where the stuff actually is.

It is amazing to come in here and listen to people from the ministry tell us about the high standards that they have set for the storage of hazardous waste and then to go back to my own riding and see in the old barn the old rusted-out can that has that substance in it. So there is quite a difference between reality and theory here.

Without interfering with the process that I hope eventually will happen, that will result in a facility, are there things that you could do that have to do with the transfer sites? In running through the list, I am sure that the people at Al's Moving and Storage in Kitchener do a wonderful job; it just does not make me beam with happiness that that is who is handling hazardous waste.

They probably are doing a good job, but I would like a better name put on them for lack of anything else. The transfer sites thing, it seems to me, is right now within your mandate and surely, by the time you become operational, will become critical. I think a lot of work needs to be done there. The transportation stuff, I think, is incredibly important. I heard you discuss just briefly hospital waste as being something that eventually may wind up in your facility; it now winds up in garbage dumps. It is not supposed to, but it does, and we know that.

In terms of onsite preparation inside the factory, in reading the record of what you have done in that regard, it seems almost incidental that sometimes you make a connection between somebody who has a problem and some new technology or piece of equipment somewhere, and it happens. Are there things that could be done there in anticipation? Before we get this site in operation, could we attempt to get a better handle on that? I do not want you to start up another IDEA Corp. or to fund these folks or do anything like that; but I would very much like you to exchange information with them, that kind of stuff.

Dr. Chant: We think, and this is obviously open to debate, we are doing a reasonable job in getting information out to industries, including the trucking and all related industries, with respect to the safe and effective handling of industrial waste, waste reduction, recycling, and so on and so forth. There are other things that we contemplated and, incidentally, on the waste exchange, it is not quite as passive. There is a full-time staff member at the Ontario Research Foundation who works as a broker to bring together the parties, the generators and the users. More could be done, I accept that.

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One of the things I would like to have done some years ago was to create our own tank farm, to begin to build up an inventory of industrial wastes in



anticipation of that wonderful day when our plant will go into operation and we can begin to deal with it. The sad fact of the matter is that to do that, we would have to go through exactly the same process we are going through to establish the main plant itself, including all the environmental assessment work, the site selection, where is the best place to have a storage facility, an angry community and, ultimately, a very searching and testing hearing process. I do not think the corporation could handle two jobs of that magnitude with the heavy demands for public consultation in dealing with an angry public.

The sad matter is that in most instances where we go out and encourage industry through persuasion to do thus and so to try to improve the performance of transfer stations and so on and so forth, again since we are not policemen, the bottom line is that the system is not going to work unless we have facilities such as we plan. The nastier the waste, the more difficulty there is in storing it on site, on the plant, in transportations and the more we come to the conclusion that there are no adequate facilities in the province for dealing with hazardous industrial waste. Until you have that cornerstone in the system, I think many of the things that I agree with the member must be done in the future we cannot do until we have that cornerstone.

Mr. Breagh: One of the things that concerns me, for example, in looking over this list of transfer sites, which looks pretty complete—one of the things that came to my attention is that, although I live in one of the most industrialized areas in the province, there is no recognized transfer site. That means there is no storage of hazardous wastes, except I can give you a pretty good itinerary in my riding alone of where this stuff is stashed. The difference between the theory of what we are doing here and the reality is somewhat startling and probably will not emerge until we have our own disaster, such as they just finished having in Montreal.

Dr. Chant: I think a lot of the wastes that you may feel are being stored in your community are probably stored on the generating plant site and therefore of course they would not be on this list because this is the commercial transfer station.

Mr. Breagh: That seems to be the critical thing. As long as you do not move this stuff, it is okay and, hopefully, the onsite storage is reasonably safe now.

Dr. Chant: Comprised of PCBs. Yes, generally speaking, if you are an industrial plant and you are generating compound X as an industrial waste, if it is not on the list of PCBs and other particularly hazardous materials, you can store it for ever waiting for us to come along. But you run out of space and you spend a lot of money.

I spoke to the president of one industry last year and he had just approved an internal expenditure of a quarter of a million dollars to improve the storage facilities for PCBs on his plant, while waiting for an adequate solution. He said to me: "Dr. Chant, if your plant was up now, I would not have had to spend that money. I could have sent that material to you and you would have put it through your incinerator and that would have been the end of it." That story is probably repeated umpteen times across this province with a lot of futile expenditures, just marking time with this difficult material simply because the province does not have the capacity to deal with it.

Mr. Jackson: Do not say futile expenditures when it is environmentally responsible.

Dr. Chant: Yes, it is. It would not be necessary if our plant were up and running. That is the point I am trying to make.

Mr. Dietsch: Do you have a handle on those storage sites that are across the province? You gave us a list of transfer sites. Do you also have a list of all the storage sites?

Dr. Chant: We do not have a list, although we have access to it. The ministry maintains that list. Through our contacts with industry, we are members of and participate in a list of innumerable industrial associations. We have all these plant visits that I described yesterday and we help with waste audits, waste reduction and recycling. Through that line of contact we get a lot of information.

I have said it so many times I am almost embarrassed to say it again, but in this context it is important. The fact that we are not policemen—and industry is coming to recognize that we are not policemen; we are not the layers of charges and so on—has given us access to information that probably the ministry cannot get without a subpoena or some action like that. I think industry is coming to trust us as not being policemen and as trying to work effectively with it to find a solution to this problem. Yes, we have a lot of information about that.

Mr. Dietsch: I guess, Mr. Breaugh and Dr. Chant, the summary of my question is based on the fact that eventually all these storage sites throughout the province are going to have to be transfer sites from those particular areas to the area where you are going to eventually dispose of these materials. That information is there is what you are saying.

Dr. Chant: Yes. It is very much built into the statistics that Mrs. Marland was asking me about yesterday. When do we reach full capacity? When do we reach a break-even financial operation? Clearly, there is going to be an early flush of stored material coming to us, which helps us achieve in that fourth year the full capacity of the plant faster than if there was not this material stored all over the province. That has been built into our quantity calculations and our capacity calculations.

Mr. Dietsch: Thank you.

Mr. Chairman: I believe the ministry then would have a list of where all this waste is stored across the province?

Dr. Chant: If the storage facilities require licensing or a certificate of approval, yes, they would certainly have a list.

Mrs. Marland: Just as a supplementary, my understanding is that the Ministry of the Environment knows today where PCBs especially are stored and have known. It has been catalogued, controlled, registered, whatever kind of terminology we want to use here. That list exists today.

Dr. Chant: That is what I am saying. It does, yes.

Mr. Breaugh: I do not believe it does. I believe that you are right. I believe that where there was a need for a licensing requirement, we have



that list. I do not believe for a minute that we have the comprehensive list of where PCBs even are stashed around Ontario.

Dr. Chant: I think we probably do with PCBs, but I did emphasize that if it requires a certificate of approval, it is on a list; but if you are a small industry in Belleville, for example, and at the back of your plant you are storing some toxic waste, it is not on anybody's list and does not require a certificate.

Mr. Breaugh: That is right.

Dr. Chant: No, there is not a list, of course. It is only the materials that require an act of approval for storage, transportation or disposal that would be on that list. That is why I answered the way I did earlier. I think we know more about the waste beyond that cutoff point than probably anybody else does in the province simply because of the hundreds and hundreds of plant visits and the spirit of co-operation and support that is developing in industry over the last five or six years with respect to OWMC.

Mr. Breaugh: Part of my concern—and this is a very difficult business—is that when people say, "Yes, we have a list," we do have a list, but to pretend that list is comprehensive is naïve in the extreme.

For example, we had an old tannery in Oshawa that was in business for about 100 years located on a creek that had been the receptacle for—I think it was the industrial sewer for the city for a century. To pretend that we have the vaguest notion of what is in and around the soil and the water in that vicinity is ludicrous. We do not have a clue. We may have a clue if somebody moved hazardous materials recently; we may have a clue if somebody kept a list. But no one on this earth knows what is in the earth in that area, at the bottom of that creek, and we should not pretend otherwise.

Dr. Chant: I think that is a very important point and I totally agree. As part of our planning process, we are developing a capacity eventually to be able to deal with that kind of problem if we are asked to either by the owner of the property or by the ministry. The volumes there potentially are enormous. Reclaiming soil—and we all read these stories about lead-contaminated soil and so on in the newspapers—the volume implications of that in a treatment plant are just absolutely enormous.

I think another point is important, in reaction to Mr. Breaugh's comments. With most of these regulated substances—I do not think with PCBs—but with most of the ones that do require a certificate and some approval, there is a minimum cutoff. A small industry could have perhaps a 20-gallon can of some particularly toxic waste that probably would escape the net because of this minimum requirement. It is presumably done for administrative expediency, but even if you added all that together, you would still have a fairly substantial amount, especially in a community such as yours.

Mr. Breaugh: Or if you went to anybody's community and went around to every service station and asked, "What do you do with the stuff that you have?" That is stuff in the broadest terms, oil, byproducts of oil, batteries, old car engines, crank cases, all of that. "What do you do with that kind of waste?"

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Dr. Chant: The used motor oil now is reclaimed and restripped, but that is only a part of the story in an operation like that.

Mr. Breaugh: That is the theory.

Dr. Chant: Another example would be a photographic developing lab. They use cyanide materials and heavy metal materials and so on. Individually, a small photographic shop perhaps is not very important, but a chain of developing shops across the province is producing a measurable amount of waste that should be dealt with.

Mr. Breaugh: I want to pursue one other area with you that you brought up this morning. It might be loosely called an emergency response system because you indicated that in the Niagara area you had gone over this. I would probably guess that is because there have been some major problems in that part of the province. The difficulty, of course, is that that is where it has happened so far. It is fine to say we have had major environmental spills in that area with hazardous waste. After the fact, of course, we are very good at seeing that we do not make that same mistake again—we will make some other one the next time—but the difficulty is that it is extending across Ontario now.

Certainly, although the Niagara region is one where you would key on that, that being the prime location or proposed location of your facility and a major industrial area, throughout Metropolitan Toronto that is our major traffic area, the major industrial area through the adjacent areas in and around Metro as well. Have we done the same kind of thing there?

When your facility becomes operational, as you just said, one can anticipate, at the moment that plant goes into production of the treatment of this hazardous waste, there is going to be a rush of people who will simply sit down in their corporate boardrooms and say, "Well, instead of spending \$250,000 to provide safe storage for this material on our plant site, let's just ship the stuff out of here because there is now a treatment facility in Ontario that can handle that." We may well see some cross-border stuff in there.

People who watched the CBC last night concerning the Montreal incident were probably quite shocked to find out that the province of Quebec has indeed a storage facility, which has been built but cannot be opened up yet. The sense and the logic of how we proceed to handle these problems really escapes us a lot.

Is it conceivable that the same type of approach that you used in the Niagara region, having to do with emergency response, could and should be repeated in other parts of Ontario?

Dr. Chant: I think it should. I would like to speak as Don Chant now and not as a public servant. Each municipality in Ontario is responsible for coming forward with an emergency response planning document that it generates and bring forward to some kind of approval mechanism. I am not fully aware of what it is because it could be any kind of emergency, not necessarily related to hazardous materials.

But there are certain areas of common interest. There is an expertise in dealing with a spill of industrial waste. There is a different expertise in



dealing with a spill, let's say, of a nuclear waste or of an industrial product that is not a waste at all, but a tank car full of chlorine. We all know what that hazard is. Tank cars full of sulphuric acid or nitric acid, which are on our highways every day, pose different kinds of problems.

Rather than each municipality being asked to reinvent the wheel, create its own expertise, create its own emergency plans, it seems to me in the areas of common interest like that, there are broader roles to be played by the provincial government. We are trying to play that with the emergency response one, so far focused on the region of Niagara where the deepest concern is, but we would extend that to any emergency planning related to industrial waste accidents in the province.

I have met with the organization of fire chiefs in the province at an inaugural meeting, and our staff now meet with those people. I have met with other emergency response officials outside the region of Niagara and offered our services, but again we come to that point of frustration. I do not have a fire truck at the present moment to offer for any emergency in the Niagara region over and above industrial waste that might require a specialized fire truck.

I cannot get a fire truck until I go to an environmental assessment hearing. If I wanted to buy a fire truck tomorrow and say, as an upfront gesture of good faith to the region of Niagara, "We will make that available next Monday morning," I could not do it without going to an environmental assessment hearing and having all the people who are opposed to fire trucks come with their lawyers. Then we are into the process which you outlined earlier.

Mr. Jackson: Are you serious?

Dr. Chant: I am absolutely serious.

Mr. Jackson: Can you go into a little more detail, without taking 20 minutes to do it? Could you just explain exactly what you meant by that?

Dr. Chant: We cannot acquire any equipment or facilities for dealing with, handling, treating and disposing of hazardous waste without being subject to the full requirements of the Environmental Assessment Act.

Mr. Jackson: Is there no loophole so the fire department can acquire that without having to go through the Environmental Assessment Act?

Dr. Chant: The fire department could acquire it with government funds. I do not think we would be permitted without Management Board approval to provide the funds for that. I assume the minister could.

We cannot acquire title to any physical entity for handling, dealing with, transporting or disposing of industrial waste without being subject to the full requirements of the Environmental Assessment Act.

Mr. Jackson: Are you telling me that all these people who buy similar equipment who are on your list have had to go to environmental hearings in order to acquire the machinery?

Dr. Chant: No. They are not subject—

Mr. Jackson: I am still missing something. What makes you special?

Dr. Chant: They are not subject to the Ontario Waste Management Corporation Act and orders in council. Many of these people went into operation before there was an Environmental Protection Act or an Environmental Assessment Act in Ontario, prior to 1974 or whenever it was. As commercial operators, they are exempt from the provisions of the Environmental Assessment Act today. The Environmental Assessment Act applies only to government initiatives and proposals, except by designation. They would today, however, be required to go through the procedures of the Environmental Protection Act, which might or might not, at the minister's discretion, require a full public hearing.

Mr. Jackson: Could we have research flag that point and later in our deliberations come back to it? I am kind of concerned about that piece of information.

Mr. Breaugh: Before we turn this all over to Al's Cartage, which is awfully tempting this morning, let me just conclude by getting a response from you.

I am frustrated by this process immensely. I would have preferred to start from day one saying: "This whole thing is covered by the world's greatest environmental assessment process. We will fund every intervenor that God can put on this earth, but let's get something in place." Then, in a decade, I would have anticipated that surely to God something would have happened. In a decade of this process not very much has happened.

Certainly the provision of a facility to treat hazardous waste should have been a priority. If it was, we are making that the most difficult priority we can find. I am not inviting you to buy a fire truck; God forbid. It would be the world's most expensive fire truck, I am sure.

If it is true that you cannot buy a pickup truck without going through this process, and the thing is so stultified as to prevent any action happening, then there is clearly something wrong. Surely we are not arguing against a full environmental hearing. I would be the most fervent advocate of that. I am a fervent advocate that it be done fairly, that intervenor funding be given as broadly as makes any sense to anybody. But I want the process to start. I want to see an end to the process some time in our lifetime. It seems to me that that is only reasonable.

Dr. Chant: Could I just respond in two brief ways? I share the same frustration. I think I have shown that. I hope I have shown it at the meetings today and yesterday.

It is how to control the system, I think. Maybe in the environmental assessment requirements we should be making a distinction between public services that are generally perceived to be of benefit to the environment and the health of the people of Ontario, and other activities that are seen as being pure threats, if you want to put it that way.

I make that distinction in my mind, but I am highly subjective about it. I can find you opponents of ours in West Lincoln who would not concede that there is a dividing line between those different categories. They see us as a pure threat and rightly, I think, demand and insist on the full hearing process.

Any proponent such as ourselves, subject to this intense, rigorous and demanding scrutiny, obviously has to take the time to do the job right. We



cannot go forward to a hearing process with an ill-conceived project that is going to get blown out of the water at the hearings.

It is in nobody's interest to spend \$69 million and fail, because that, in my view, would set the cause of industrial waste treatment in this province back probably 15 or 20 years. Our successors would be sitting around this committee room 20 years from now probably having the same kind of discussion. The stakes are very high.

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Mr. Breaugh: The other thing that has occurred to me—and I will close with this—is that in going through this process we have spent an inordinate amount of money and have delayed the process for a very lengthy period. There are no winners in this that I can see. I cannot see as winners the people who are opposed to this facility and its current proposed site and who have the threat of this type of facility in their backyard for a long period of time. I do not see you as being winners, except in certain crass personal terms. I cannot see the population of Ontario being winners.

But if there are any winners in here, they are some people who have had some measure of protection, who have not had to spend money to process this industrial waste for the better part of a decade. There are some winners, in terms of delay in putting that expense where it properly belongs, in my view, on those who create this particular kind of industrial waste. I do not want to paint the worst scenario here, but some people have really had a 10-year grace period, and we have paid \$69 million to provide them with that.

We have not gotten very far in terms of addressing the need of the people of Ontario to have a facility of this nature, wherever it might be. If I lived in West Lincoln, you probably never would convince me that that is the best site to put this. People would be crazy if they said, "Yes, come and put it in my backyard." I think the best we can offer to anybody in that position is a fair hearing process where they have their day in court and, if they have legitimate objections, they can put them forward.

Dr. Chant: I think that is exactly right. The winners in this, to use your words, are the people who put the due process above all else. I am not being critical when I say that. I have been very active in the environmental movement for most of my adult life. Due process in forcing through the political process, as in the late 1960s and early 1970s, adequate process of environmental assessment and review became the symbol, and that process above all is still terribly important to those who share those concerns. I think that is a very important consideration. Much of the environmental assessment law and the regulations that guide the hearing process were very much in response to that almost irresistible pressure that society created in this country—in this province, anyhow.

I think on the other side—and I am going to say something that is not nearly as nice as that—there are some strategies, whether taken by us as a proponent or anybody else with an unpopular proposal, to take advantage of the system and play for delay so that you, the legislative masters, will run out of patience at the \$69 million or the seven years it has taken and some of the frustrations you have expressed today. Delay is often seen as a tactic to achieve failure of an undertaking. The system is vulnerable to that too, but I do not know how you prevent the abuses of the system when I do believe the principles of environmental assessment are very much in the best interests of the people of this province.

Mr. Chairman: Is that not the whole point right there, the abuse of the system? You, as one of the proponents, should be telling us how that abuse can stop. Look at the millions that have been spent in Halton—\$20 million. You said yesterday that you would hope to have the environmental assessment hearings over in a year. Do you not today believe that those hearings could go on for three years?

Dr. Chant: Yes, they could. I did cite the Victoria Hospital incinerator. I think you raised the issue yesterday. From the start of the hearings—that is, lodging their environmental assessment with the ministry—to the final approval to proceed through legal action and court cases was three years. A year is an optimistic scenario, there is no doubt about it.

I think there are some other ways that should be looked at. I am sure the ministry's review process, which Mr. Bradley set up, is doing this. One would be to require all participants in the hearing process to identify their concerns at the beginning and to limit the discussion and the review through the hearing process to those identified issues.

Now, people will claim that is undemocratic. Some things may occur to them later on through the process, and they always want the opportunity of raising new issues. One would have to decide how far you would go in denying the opportunity to raise issues throughout the process as distinct from at the beginning, but if they were all raised at the beginning and there was adequate intervenor funding to allow people to do their homework and identify genuine issues, at least the road map would be much clearer than it is today and there would not be any hidden surprises, either for the opponents or for the proponents, during the hearing process. I think the Environmental Assessment Board is moving toward that kind of system.

Mrs. Marland: They did do that with the Petro-Sun SNC proposal, the hearing that is still not complete in southeast Brampton.

Dr. Chant: I do not think they closed the door, though, did they, to bringing in issues later in the process as they might emerge?

Mrs. Marland: Yes, they did, because Pollution Probe wanted to do just that. They agreed ahead of time what areas of evidence they would hear.

Dr. Chant: Are you talking about the SNC in the United States or in Ontario?

Mrs. Marland: No, in southeast Brampton.

Dr. Chant: Okay. I think it is the impression of most people that the door is not closed to raising issues subsequently in the hearing process, and again it is a very delicate issue to deny them the opportunity of doing that. But Mrs. Munro held a public meeting this month to begin to review the procedures that would be used for the Environmental Assessment Board to fund intervenors in our program once our responsibility in that regard is ended. She did, I think, indicate how much it would improve the system if intervenors were asked to identify the major issue to start with, and the environmental assessment authorities have always been interested in trying to resolve issues prior to the hearings even getting started.

If the region of Niagara and Chairman Dick and his staff have emergency response concerns, it is in everybody's interest for us to resolve those prior



to even getting to the hearing so it is not on the hearing agenda. Somebody will raise emergency response issues during the hearing process, and legitimately so, but I think to have all substantive issues identified at the beginning would be a step towards the simplification of the hearing process itself.

Mr. Jackson: I come from Halton and have been involved with the landfill site hearings and the political interventions, which I think you have avoided referring to, that have been involved in your process, but I envy you your ability to get rid of the Cayuga site, because we have a similar situation with the Halton landfill site, which is identical.

Dr. Chant: Yes, it is.

Mr. Jackson: In a watershed with fractured shale one mile from Burlington Bay, and we now have \$20 million of public funds spent to stop it.

Dr. Chant: And 14 years, too.

Mr. Jackson: I know. Although we have been critical as we conduct our investigations with you before this committee, when it is put in context with what is happening in Halton, as I think the chairman appropriately put it, there have to be some other answers here, because there are some commonalities. We are spending money in Halton at an inappropriate level.

However, my questions have to do with the same questions that I raised when I attended your public meeting in Hamilton to unveil the Lincoln site selection. I had hoped that Mr. Scott, with all of his audio-visual department, would have brought a map of that part of southern Ontario so that I could have been a little more demonstrative with my questions, but I will have to be more descriptive.

I would like to talk about what happens between your site and the producers of the chemical waste. As I mentioned earlier, I have concerns about the fact that, if I recall correctly, 70 to 80 per cent of the materials you will receive will come through through the Highway 403-Highway 401-Queen Elizabeth Way corridor, which goes directly through the great riding of Burlington South. I have a lot of concerns about that, and for whatever reason, you have provided me with an extended period of time to advocate for that. I thought I had a far shorter period in order to do that work.

Two years ago I presented a resolution to the House with respect to designated hazardous goods transportation routes. As you know, we are the only province in Canada that does not have them. I have serious concerns about the fact that we have some regulation but certainly the weakest laws in Canada with respect to designated truck routes for hazardous goods. Having said that, I would like you to comment on the truck routes issue.

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I would also like you to comment about what you are doing beyond the 14 municipalities or communities you have met with in Niagara region, because I think the greatest risk point—this is my opinion, having read all the documentation and your report—is the point at which we cross over Lake Ontario with the chemicals on the Skyway bridge. We pass a total of seven watershed entry points to Lake Ontario before we turn north to go up the escarpment, which is the second most hazardous point, the truckers will advise us. I have serious concerns about what we are doing and about how you are advising this government with respect to transportation of goods.

I would like to pursue even further the issue of the regulatory standards for trucks, because they vary. Also, I personally have been on record that I did not support the West Lincoln site, that I would have even supported the North Halton site because of my conviction that we cannot put our drinking water at risk, which is what we are doing by allowing the transportation corridor to go across the Hamilton bridge and the canal.

Virtually all of us in southern Ontario get our drinking water from Lake Ontario. That concerns me deeply, and I still do not see where we are trying to regulate. That is why I will pursue very diligently the point about the testing station in conjunction with our weigh stations along the highway there, because I feel very strongly that if a chemical in its concentrated form were to spill going over the Skyway bridge, we would wipe out our entire drinking water supply. With the kinds of chemicals you are receiving, you know that has the capacity to do it.

Dr. Chant: That is where I differ with you.

Mr. Jackson: Without going to that point, I have not asked many questions, but I do want to ask a lot of questions in this area. It concerns my constituents very deeply.

Dr. Chant: It is obviously a legitimate area of concern. Let me try my best to respond. First, the federal government—we have not mentioned the federal government before—plays a major role in the trucking regulations, especially, as we are all aware, the transboundary movement, transboundary being interprovincial as well as with the United States. The federal government does have certain requirements with respect to labelling of hazardous loads.

I myself think it is inadequate, and every time I go down to West Lincoln and drive through your constituency and across the Skyway bridge, I look at all these trucks I am surrounded by and wonder what is in them. As a reasonably well informed citizen, I cannot tell what is in those trucks. They have numbers on them which presumably relate to the federal code, but the numbers do not help me.

Mr. Jackson: You have now made this point, I think, for the fifth time. I would like you to talk to me about what you are doing in terms of talking to the federal government or any advice you have given the minister.

Dr. Chant: We are not talking to the federal government at all.

Mr. Jackson: Did you attend the hearings that were occurring in southern Ontario with respect to the transportation of hazardous goods? Did you or your staff attend any of those hearings?

Dr. Chant: I did not personally attend the hearings. I do not know.

Mr. Jackson: Could you please tell this committee or get back to this committee as to whether at any point your committee attended any of those federal government hearings?

Dr. Chant: Yes.

Mr. Jackson: I can tell you they were poorly attended. I was the only one to show up at one of them.



Dr. Chant: If I had been there you would have seen me, I guess. I do not think we did, but I will confirm that point with you. We have given our advice to the ministry on frequent occasions. We have indicated to them that our requirements for the trucking industry serving our plant with respect to driver training, equipment design and equipment maintenance will be tougher than the provincial regulations or the federal regulations, and there is general agreement in the ministry that we can do that. What we are willing to accept with OWMC policy can be more rigorous than the law requires; it can certainly not be less rigorous than the law requires.

Mr. Jackson: You have stated that you had discussions. I want to put a fine point on this. After having spent \$70 million, there are some proactive elements to the work that you do, and it strikes me, that given that we have chemicals now which the ministry is trying to get a greater handle on and given that they are being transported to these so-called transfer stations which we all know are not. We say they are transfer stations but they are actually storage facilities. But we call them transfer facilities because it makes it sound as though they are not going to be there very long. Anyway, having said that, what are we doing or are you doing or recommending to the government?

Once the plant is being built is not the time to say that now we have to focus in on making our truck transportation of hazardous goods in this province more healthy.

Dr. Chant: No, we have made our feelings clear. We have done studies on what proper truck design, training and maintenance would be. We have had innumerable meetings with the Ontario Trucking Association and the Ontario Liquid Waste Carriers Association of the province to let them know what the requirements will be.

Mr. Jackson: Can you report to us if there is any activity that the government has responded to? Has there been any response to those recommendations? That is a concern for this committee.

Dr. Chant: I would say the response is the way I indicated. It will not fully satisfy you, I do not think. The government has agreed that we can have our own standards. They support that concept. The government has not agreed that our standards would be imposed on the whole system.

I think the basic reason for that is that most of the hazardous material on the highway is not hazardous waste at all. We would be contributing far less than one per cent of the truck traffic of hazardous wastes. Most of those trucks you see on the Burlington Skyway are carrying chemicals to be used by industry. They are far more toxic and concentrated than anything we would be dealing with. I am not trying to shrug off the seriousness of what we have to deal with. I am just trying to put it into context.

I think the government—I am going beyond anything the minister or the ministry has told me—would be reluctant to feel that the standards that we might apply to our small segment of that business would have to be applied to everybody, particularly as the federal government has to get involved as well.

Mr. Jackson: I think that is a decision for us as legislators to make and although your opinions are—it is surprising that an environmentalist would take that position, but that is my personal comment.

Dr. Chant: Take what position?

Mr. Jackson: That perhaps it would be unfair to impose those standards on the rest of the industry.

Dr. Chant: I cannot claim to be an expert on the problems of carrying other kinds of hazardous material. I am not an expert on that.

Mr. Jackson: Then I would prefer you did not comment that perhaps it would be too difficult for us to impose that on the rest of the industry.

Dr. Chant: I did not say you. I think it is very much in your mandate to make that kind of comment, if in fact it expresses your belief. But I am not an elected member of the House, as you well know.

Mr. Jackson: No, you are an environmentalist making more money than the Premier. I just thought you would have a slightly harsher view of things. But I am satisfied to leave it on the record that you do not share the same concern perhaps that I do in that area, or the same level of concern. Pardon me, I know you have concern that area.

Mr. Chairman: Next question.

Mr. Jackson: I asked a series of questions and I believe Dr. Chant has only embarked on the first phase of that. That is the degree to which your emergency response investigations or recommendations have extended beyond the boundaries of Lincoln.

Dr. Chant: Yes, I did mention meeting with the fire chief as a prelude to our staff meeting at regular intervals with the organization of fire chiefs and other emergency response personnel.

I think you asked a question very early in your comments about the degree to which we had general discussions around the province on these issues. We do have a program whereby every winter Michael and I and other staff people go around to every centre and every community.

Mr. Jackson: I did not ask that question. It may have been another member.

Dr. Chant: Perhaps somebody else did. Always in those days that we are in Peterborough, North Bay or Timmins or wherever it is, we do meet with the local municipal officials and talk about things such as emergency response pertaining to wastes we would be moving out of their community.

Mr. Jackson: Would you advise me, not now of course, of those times you have had meetings with Halton and when you will be having your next meeting with Halton or any community within Halton? Could you get that information back to me please?

Dr. Chant: I certainly can try to get the information.

Mr. Jackson: Second, we have a—

Dr. Chant: You may remember we had many meetings at Halton when we had one of our candidate sites just south of Milton.

Mr. Jackson: In Milton. I am familiar with that. But we had two sites in Milton as I understand that you were looking at.



I have a concern as well with the manner in which your project is integrating with other activities in this province. I guess that is my general concern. It surfaces in just about every area. You have touched on emergency response. I think someone mentioned earlier about the infrastructure that will be required and, again, the focus seems to be entirely on West Lincoln in terms of its infrastructural needs. Of course, they are extreme because of the volumes involved. However, there are other infrastructure needs. For example, the auditor has made reference to the Highway 403 bypass from north Toronto through to Burlington, indicating that high risk and overcrowded highway circumstances are going to be absolutely intolerable within three years.

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I wonder to what degree you are meeting with the Ministry of Transportation to discuss those general questions and to join the trucking industry which is, quite frankly, advocating for a safer network for the transportation of these highly concentrated hazardous goods. I appreciate knowing the details of the kinds of meetings you have been having with the Ministry of Transportation, particularly in the area of infrastructure, again at that critical point from the Skyway bridge to the Highway 403 cutoff, because we just cannot handle the volumes today. The government has indicated the project is being delayed even further.

Dr. Chant: We have had many meetings with Ministry of Transportation officials on designated access routes, whether there are road improvements required in West Lincoln, turning lanes and things like that. We have also had general meetings with them, and they often refer proposals for highway developments or highway modifications back to us and ask for our opinion. I think there is quite a good exchange of information, but I think the bottom line with the Ministry of Transportation is that it feels the volume of trucks that would be servicing our treatment plant just are not measurable against the enormous volume of trucks that are rushing around the highways of the province.

They do not feel that we create any extra hazardous possibilities over and above the very dangerous chemicals that are being trucked around the province today and used by industry. They do not think we create a measurable impact. They have been willing and are willing and continue to be willing to assist us, to provide information, advice and guidance, and we keep them fully informed as to what we are doing. But they just do not see us from a truck volume and hazardous nature of cargo point of view. That is adding to the problem.

Mr. Jackson: Perhaps it is the curse of having taken a lot of planning at university, but it strikes me that several things will happen once the grand day comes when some government cuts a ribbon in West Lincoln. One of the things will be that some secondary industries will result from the location of your plant. The other will be that some petrochemical industries will wish to locate within reasonable proximity to the site if they have high volumes of toxic waste. This will all have an impact on the highway infrastructure, and anybody who is doing long-term planning will be sensitive to that.

The other area of long-term planning—I would like to know to what degree you have revised your figures, or have you even considered any of the impact of the free trade agreement in terms of what it says about, we are now a net importer of toxic materials to the extent to which the agreement addresses the transfer of those from the United States to Canada.

We will not get into a political discussion here about free trade, but there is general agreement that there will be some benefit to the petrochemical industry and its allied industries. We know that steel is also something that people are not arguing will not benefit directly; there are some who will not benefit. In Hamilton and Sarnia we are looking at increased production. Are you analysing that point from the document and its impact in terms of your market, and separate from the specifics of the agreement, the impact of further growth in this area?

Dr. Chant: Yes, I think we are. Let me respond to those various points. First, with respect to secondary industry developing around the treatment plant, I have asked that specific question innumerable times of the captains of industry in this province and their planning staffs. They say they will not, because the cost of being adjacent to waste treatment is a very minor financial consideration, given the other things they think about—access to airports, labour pools and their customers, of course. They say they would not be persuaded by a minor factor such as us to move into the West Lincoln community as a satellite industrial community.

Mr. Jackson: I am sorry. To be precise, I specifically said there would be some in West Lincoln, but there would be a larger ripple effect; for example, in Hamilton, as a result of the certification changes at Hamilton Civic Airport, as a result of the Redhill Creek expressway, as a result of the expansion of Dofasco and the Nanticoke development. Again, in terms of long-term planning, over the next 30 years we see a lot of expansion in this area. Some in the chemical industry would avoid Northumberland, for example, in order to locate in the Hamilton area, given that you are just one more bit of icing on an industrial package in the Hamilton area.

Dr. Chant: Industry says that we would be such a minor factor that we would not be taken into consideration. We have taken into consideration, in our estimates of our clientele and our market and waste quantities in future, the patterns of industrial development in this province as best they can be predicted. I think it is quite likely the industrial scenario that Mr. Jackson has articulated will happen, but industry says we will not be a factor in that. If they do develop a certain kind of industry more aggressively in Hamilton, it will not be because of us, it will be because of other matters.

Mr. Jackson: If you double your tipping charge. That is the whole problem we are having with landfill waste now. Of course, that is what happened in Halton. We were shipping all of our garbage to the United States, again because of their tipping charges.

Dr. Chant: The message I get is that, with any reasonable pricing policies we have, anything that could be contemplated, this would not be a factor. I think it is worth pointing out that the ministry must approve our pricing policies and our price list. This is not something we can embark on independently. That is built right into the Ontario Waste Management Corporation Act.

Mr. Jackson: If Mr. Breaugh ever gets to participate in another one of those glorious minority governments with these so-called three-page agendas, you can bet that those tipping charges will be pretty high.

Mr. Furlong: Do not worry about that.

Mr. Jackson: I do not think they will ever let you have one of them again.



Dr. Chant: The other point about satellite industries is that we are exempt from zoning bylaws as a schedule 2 crown corporation, but if the region of Niagara or the township of West Lincoln does not want industries to relocate in those areas, they can apply their own local bylaws to the private sector and prevent it.

I think the free trade implication is a very important and interesting question. I have not met anybody who can explain the proposed free trade agreement to me. I think it is quite possible that it will change the flow of materials back and forth across the border. For example, I doubt if the US can maintain a ban on polychlorinated biphenyls being exported from Canada to the United States under the free trade act. I do not know that. I do not think anybody knows that.

Mr. Jackson: I would not want you to speculate. I asked you specifically if your corporation had done any impact analysis or any analysis generally of the document or those industries. Then who within your staff has been responsible for analysing that document?

Dr. Chant: Any feedback we have had on the implications of free trade would have come from our planning consultants, Coopers and Lybrand. They have made an industry out of advising Ontarian and Canadian businessmen and so on, about the implications of free trade.

Mr. Jackson: Of all your consultants' fees, have you one in there specific to the free trade agreement and its impact on the petrochemical industry or what the free trade document says about the transport?

Dr. Chant: Of industrial wastes.

Mr. Jackson: In Hamilton in 1985 you made reference to our proximity to the US and that yes, we could transport from the US. Now we have a free trade document. I am just trying to link your speculation then. I would not want to replace it with more speculation today. I just want to try to find out whether you have gotten some hard analysis to help guide the corporation.

Dr. Chant: When I ask a specific question, such as that, of the consulting business which is making a business out of advising clients on the implications of free trade—

Mr. Jackson: You are one of their clients and they are doing a lot of business.

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Dr. Chant: And the answer is they do not know, the federal government does not know and the provincial government does not know. What we have said, given that unknown situation as this country moves in that direction, is that regardless of what free trade allows, we control what comes in our gate.

Let us say the borders were completely open to the flow of toxic industrial waste both ways and there was great interest in some of the northeastern United States in making Ontario the dumping ground of industry in that part of the states, just to avoid their own responsibility. That is a government matter. What comes in OWMC's gate is my decision.

The government is not entirely happy with that position, but I maintain

that if we are responsible for the proper handling of waste—the identification of the waste, the proper mixes going through the treatment processes—and we are liable for that, as well as obliged for it, then we have to control the materials that we take, and I will stand by that decision.

Mr. Jackson: Dr. Chant, nobody is giving you a hard time with respect to once these chemicals get on your site.

Mr. Fleet: I have a supplementary question.

Mr. Jackson: Okay, let me just get this point across, and I will not put it in the form of a question. I am not having difficulties with how you are going to handle it. I was delighted to hear your concern about the toxic storage farm, and I would try to encourage you to start getting your storage elements of it up in the preconstruction of phase one.

Dr. Chant: We are going to do that.

Mr. Jackson: I am delighted to hear that. What I am concerned about is that you have said 10 years is about as much as you want to deal with this thing. You are not even going to be around when these trucks start flowing.

Dr. Chant: I will be, sure.

Mr. Jackson: Oh, well, then you may want to revise your previous testimony.

Dr. Chant: I said I would not be around when we close the plant.

Mr. Jackson: None of us will be, but the point is that it will be a political decision as to where all the markets come from. Your requirement is to ensure that a certain standard is held up when the chemicals arrive on your doorstep.

Now I am not that naïve not to know the West Lincoln location has something to do with a humongous market of toxic materials in upper New York state, in western New York.

Dr. Chant: I simply cannot accept that. We have been very straightforward about this at the beginning that we are building an industrial waste treatment plant as a service to the people of Ontario and the industry of Ontario. We have gone one small step further in saying we would accept waste from other jurisdictions on a reciprocal basis only.

Mr. Jackson: But that is not your decision to make.

Dr. Chant: I have made it, and the minister and the ministry have accepted that.

Mr. Jackson: We are treading water until this plant gets open. We can make any pronouncements we want.

The fact is that at the federal level we are going to have, at some point, high-level discussions to talk about the poisoning of our drinking water from an American source. The plant's location and its proximity holds within it a key to some of the solutions.

I just wanted to know the degree to which you and your staff have been



investigating more thoroughly the impact, if any, of free trade. It has not been a matter that has compelled the—

Mr. Chairman: You have asked the question. Now let's have an answer.

Dr. Chant: I have answered it. Every time I ask the specialists, they cannot tell me what free trade will do, and in the absence of hard information, I have taken the position that we control what comes in the gate.

What I am objecting to is any implication that we chose West Lincoln to be next to the US border. That I do reject, and I think our site selection process and our environmental assessment of how we got to that site answers that question adequately.

If the member is saying that a future government of the day could instruct Don Chant to take a different approach to what I will allow in the gate, he is perfectly right. Of course the government can do that, and then I would have to make a judgement as to whether, in conscience, I could accept that instruction or whether I would have to resign. It is a very hypothetical situation, but my only alternatives, really, are to accept it or to quit.

Mr. Breaugh: Please, Dr. Chant, you have not got a pot or a window yet. Do not resign.

Dr. Chant: Sometimes I am tempted.

Mr. Chairman: Mr. Fleet, did you have a supplementary?

Mr. Fleet: On the series of questions from Mr. Jackson, I would like to understand the lawful authority you would have for refusing a truck that arrived at the doorstep of the plant that qualifies on what I will call technical grounds; it is the right kind of waste that is supposed to be accepted. What lawful authority says you get to pick or choose whether you will take them in?

Dr. Chant: Let me start with an easy situation. If we detected radioactivity in the waste we would reject it out of hand, because that is not on our legislative mandate and we would have full authority to do that.

More likely, the waste would not match the original analysis that we did. There would be something in there that should not be in there.

Mr. Fleet: These are answers to questions I have not asked, things that—

Mr. Chairman: Mr. Fleet, I have the floor and I have to rule you out of order, because you took 30 minutes this morning and you have colleagues who are waiting to ask questions.

Mr. Fleet: With respect, Mr. Chairman, he is answering a question I simply did not ask. I put a supplementary question. We have had a lot of supplementary questions from all sides on this matter and, frankly, there are other speakers here to whom I have no objection, although over the two days they have taken much longer than I did. I have a simple supplementary question.

Mr. Chairman: You have asked the one supplementary, and I will go back to the original. Mr. Jackson.

Mr. Fleet: With respect, I did not get an answer.

Mr. Jackson: I will yield, Mr. Chairman. I will come back later this afternoon. Thank you.

Mr. Chairman: Mr. Lipsett is next on my list.

Mr. Lipsett: I would like to pursue the Ontario Waste Exchange and its future role. In your 1986-87 annual report you report that the activities of the OWE will greatly increase in 1987-88, especially with an agreement for funding with the Ministry of the Environment. Where is the Ontario Waste Exchange? Who runs it and what is its function?

Dr. Chant: It is run under contract from us and the Ministry of the Environment by the Ontario Research Foundation in Sheridan Park. The increase in activity that was alluded to was the point at which we hired a full-time staff member at ORF devoted to the Ontario waste exchange program.

There is a Canadian waste exchange program which started perhaps seven or eight years ago, and it is a very passive program. If you are in industry and you subscribe \$50 per year or something, you get long, long lists every month of the wastes that are available to you as a resource, if you exercise your own initiative and you are willing to get out there and make your own contacts and buy those wastes or otherwise acquire them.

The Ontario waste exchange program, which we started with ORF before the ministry got involved about six years ago, is much more active than that. We try to play an active role as a broker and not just leave it to the two parties to identify their common interest. We will go out to a company and say, "Hey, did you know that you could get your zinc powder that you need in your production process from this company that produces zinc dust for metal finishing?" We will arrange a marriage, if you want, between those people and let them conduct their own affairs.

The ministry came in, I think two years ago, and supplemented the funds that we had made available to the ORF for the program with I think it is an equal amount.

Mr. Bentley: It is 50-50.

Dr. Chant: Yes, 50-50, and it amounts to some \$140,000 to \$150,000 per year from the joint sources to hire this full-time staff member, provide the computer time, the printing time and so on for this more participatory program over and above the passive Canadian waste exchange program.

Mr. Lipsett: If this is a brokerage-run business, will it become self-sustaining?

Dr. Chant: No, I do not think it ever will. I think for us to charge a fee for that purpose, which I think everybody supports, would be seen as a disincentive by industry anyhow. They would begin to suspect our motives a little bit. At the present moment, it is very clean. People accept it as being a positive offer, a positive service that we give.

Personally, I think it is a cost that the province should be prepared to bear. It is quite a modest cost but I think the payoff is quite high in the wastes that do not get into the environment, do not get into sewers and do not get inadequately disposed of. Instead they get used in some productive way. My



own feeling is, and we have asked ourselves this question, that we should not charge for that service.

Mr. Lipsett: So there is no charge to either the vendor or the—

Dr. Chant: There is a charge for the subscription to the listings of waste which ORF conducts. It does the publishing, the printing, the text and everything else. They do receive some modest revenue from the subscription rates. I think there are either 8,000 or 10,000 industries in Ontario that subscribe to the waste exchange program—Michael tells me 13,000—and they pay \$25 or \$50 a year to ORF.

Mr. Lipsett: So do most of these wastes have a monetary value, or is it in some instances that the vendor pays a fee just to get it moved?

Dr. Chant: It is a mixture. Some of them do have a monetary value, whereby the waste generator is looking to earn some revenue from selling it as a resource. I think in most cases, though, the transfer is done by saying, "We will take your waste off your hands, fellows, and be good guys, if you will ship it to us at your cost." The cost would be the trucking, and there would not be any payment for the goods received. In some cases, there is, though. There is no doubt about that.

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Mr. Lipsett: Finally, what volumes of waste are being transacted and what does the future look like as to increased volumes?

Dr. Chant: It is almost impossible—I have asked that question many times of our staff and of the ORF staff—to get a handle on the total volumes, because many transactions go on that we are not aware. Somebody gets the list and says, "Hey, I could use that zinc dust," to use an example. They do not even tell us about it; they just go and make their deal with the generator.

Of the wastes that we have a record of, where some action on our part through this program has brought about this relationship, there are tens of thousands of tons a year now that are being taken off the environmental streets, if I can put it that way, and put to some more productive use. The quantities are quite—in the overall picture they are not all that large now, but they are important. I think they are significant. We cannot measure them all because of the deals that are privately arranged by the two parties without our intercession and without our assistance.

Mr. Velshi: I think after two days of listening, I have just about figured out what concerns me. You have stated several times that you are responsible for hazardous waste once it enters your gates. I am concerned about the hazardous waste that does not reach your gates.

Your title indicates that you are in charge of waste management in Ontario; yet you say that the hazardous waste in household garbage is not your concern. I do not think municipalities are concerned about hazardous waste. They are just looking at garbage as garbage, and their biggest concern is where to put it right now. You have narrowed down into industrial waste and that is all you are concerned with, and not with household waste that has hazardous waste in it.

Dr. Chant: I think there is a misunderstanding. I thought I had indicated in response to Mr. Fleet's comments this morning that, yes, we have

an important role to play in hazardous household waste. We have a role to play in helping to collect it and we certainly have a role to play in making our treatment facility available for its proper disposal. There is no question about that whatsoever. If there is a misunderstanding, I apologize.

Mr. Velshi: All right, but it is just that you are not paying much attention to it because you are strictly concentrating on the industrial wastes right now and what comes through your gates.

As a side issue, when somebody dies, when the body is prepared for embalming, blood is drained out. What happens to that blood? I would call it hazardous waste because it may contain the acquired immune deficiency syndrome virus.

Dr. Chant: It certainly does not conform with the definition of industrial waste that is embodied in the Ontario Waste Management Corporation Act. What happens to it, bluntly, is it goes down the sewer. But it is not on our list of wastes that we would be responsible for. Biomedical waste, used syringes, used test tubes and that sort of thing, yes, we would have the capacity to deal with them. There is no question about that. But blood drained from cadavers is not on our mandate. That is on the mandate of the Ministry of Health.

Mr. Velshi: So it could very well be going into Lake Ontario.

Dr. Chant: It is going somewhere, but I am not speaking as an expert. I do not know. I have not spent much time in mortuaries.

Mr. Velshi: The other thing is that up till now, I was blissfully ignorant of where the PCBs were. Now suddenly I realize that next door we have PCBs at the University of Toronto. If there is an accident there and that university closes, so does the Legislature. In Britain, during the wartime, there were alternative arrangements. When the Parliament closed, they had to sit somewhere else. I am just wondering whether we should not be looking into that.

Dr. Chant: Mr. Scott has just reminded me that there is a recent requirement that those kinds of establishments do register with the Ministry of the Environment. I suppose if somebody in the future made the judgement that they were wastes requiring treatment such as we could provide, then we would become involved, but at the present moment we are not.

Mr. Velshi: Registration does not prohibit accidents from taking place, and that could happen tomorrow.

Dr. Chant: No, I do not think it does. Again, I think you have a problem with many mortuaries that are not very well equipped to deal with some of these issues. I think the disposal of cadavers—the incinerators used for burning human bodies—is of increasing concern in many communities. Are the same standards of emission controls being applied to little local incinerators as are being applied to industry? I am way beyond my area of competence—I want to emphasize that—but I suspect the answer is no.

Mr. Velshi: Just as a final thing, when do you anticipate these hearings commencing?

Dr. Chant: In 1989. If the ministry and the other government agencies that still have to review our submission which we made last February



can meet their timetables, the hearing process will begin some time in the spring of 1989. But it may well be later, depending on the ability of the other reviewing agencies to turn around our documents.

I think it is a very important point that I should have made yesterday that when we submitted our draft environmental assessment in February of this year, last winter—a massive document—we lost control of the timetable. We are now henceforth in other people's hands, those of the reviewing agencies, the ministry and eventually the hearing panel. We do not control the timetable again until, hopefully, cabinet approves the proposal and we undertake to start construction. That is the situation.

Mr. Chairman: Will there be a timetable in place once this process is—

Dr. Chant: We have a timetable. The ministry and the other agencies are aware of it, but whether they have the resources to meet the very heavy demands that we make on the system—I think I commented on that in my opening comments today. It is a legitimate question, but we do not control the process so I am making a guesstimate. Our hope is that the hearing process will begin next spring.

Mr. Chairman: I do not know how long you want to be, Mrs. Marland?

Mrs. Marland: I certainly want to be more than one minute, and it is one minute to noon. I do just want to ask one question on that matter, though, because—

Mr. Chairman: Just before you ask any questions, I want a clarification from the committee. It appears to me we are not going to be able to finish by 12:30 p.m. but if you wanted to work till then and if you thought it would be short enough—

Mrs. Marland: I am sure both my colleagues in opposition, who are not here at this moment, have further questions, so it is not only my questions.

Mr. Chairman: That is fine. We have one hour then from 2 p.m. to 3 p.m. that we have scheduled to continue.

Mrs. Marland: Only one hour?

Mr. Chairman: That is all we have, from 2 p.m. to 3 p.m. Then we are in camera for briefings with regard to the St. Lawrence Parks Commission.

Mr. Dietsch: The committee, I think, always has the option, if there are a lot of questions, of bringing Dr. Chant and the individuals from the OWMC back before us. That is something that we can take into consideration before we finalize, if the member has a great deal of concern over the number of questions.

Mr. Chairman: I am just relaying to you what our scheduling is for today.

Mrs. Marland: I did not know we only had an hour this afternoon but actually, now that I look at the agenda, I see that is so. I will be happy to resume at 2 p.m. then.

The committee recessed at 12 noon.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO WASTE MANAGEMENT CORP.

THURSDAY, AUGUST 25, 1988

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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VICE-CHAIRMAN: Jackson, Cameron (Burlington South PC)

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Martel, Shelley (Sudbury East NDP)

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South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Fleet, David (High Park-Swansea L) for Mr. South

LeBourdais, Linda (Etobicoke West L) for Mr. Black

Marland, Margaret (Mississauga South PC) for Mr. Runciman

Clerk: Deller, Deborah

Clerk pro tem: Arnott, Douglas

Staff:

Yeager, Lewis, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Waste Management Corp.:

Chant, Dr. Donald A., Chairman and President

Bentley, Lorne K., Director of Administration and Finance



AFTERNOON SITTING

The committee resumed at 2:04 p.m. in room 151.

Mr. Chairman: I call the meeting back to order. We will continue with the Ontario Waste Management Corp. The first person I have on my list for questions is Mrs. Marland.

Mrs. Marland: Regarding the list that we had handed out this morning, I am not sure whether it describes transfer stations, Mr. Chairman, or storage locations. Where did the list come from?

Mr. Chairman: My understanding is that it came from the Ontario Waste Management Corp.

Mrs. Marland: This list was generated by you? Okay. In regard to all these companies and locations that are on this list, what would you describe these locations as?

Dr. Chant: How do you mean, what would I describe them as?

Mrs. Marland: Are they waste transfer locations? Are they hazardous waste storage locations?

Dr. Chant: They are referred to by the ministry, by ourselves and by themselves as transfer stations, but what they really are, I would say, is two things. One, they are bulking and sorting stations. Many of them will temporarily store material until they have a full load to go to somebody, Tricil or somewhere else. Two, there is a certain amount of segregation of recyclable solvents, for example, from other material that does not have that potential. But it is my understanding that none of them, with the possible exception of one, do anything that would be called treatment.

Interim storage, transfer, bulking and sorting stations would be a very wordy way of describing my understanding of them.

Mrs. Marland: Do you know what the term "interim storage" means in terms of time?

Dr. Chant: I have no idea. Again, I have to make the point that we are not the regulators, we are not the policemen. These are the licensed operations.

I think I made the point this morning before Mrs. Marland came in that many of these have been in existence for a long time, prior to the Environmental Protection Act and the Environmental Assessment Act, and I suppose they are grandfathered under those provisions.

This is not our list per se, I think. If you ask me where OWMC got the list, we got it from the Ministry of the Environment and its various sources in regulating this system.

Mrs. Marland: I have to say, Dr. Chant, that the number of times you will be recorded in Hansard in the last two days as saying you are not a policeman is almost humorous from the standpoint that you are far more. Your responsibility and your power is far greater than that of a policeman, and I think as my colleague said this morning, he does not know any police chiefs or

superintendents—I do not know any—who have the power or the sphere of influence that you have—

Dr. Chant: There is a very big difference between influence and power.

Mrs. Marland: —nor the salary of \$112,000. I think your responsibility in fact is greater. I know all of us on this committee understand very clearly that you are not an enforcement agency.

Dr. Chant: That is right.

Mrs. Marland: But you do very clearly, under your mandate, have a responsibility to know what is going on and where, and any of those areas as it pertains to the management of hazardous waste material in the province, I think.

Naturally, one of the reasons I am interested in a parochial sense in this list, although I would be interested as Environment critic in a general sense in the entire list, is that there are six locations in my riding.

As the person responsible for the planning for what is done with hazardous industrial waste in the future, do you know now what these volumes that are listed on this list contain or include, in a broad sense of content?

Dr. Chant: OWMC certainly knows in our waste quantities and marketing work. I cannot personally identify the multitude of materials, but for each one of these, of significant size anyhow, we have asked ourselves the question: What material that would be on OWMC's agenda for treatment would be included in these volumes, where is it coming from and how likely is it to be part of our marketing and transportation and collection system?

The point I was making yesterday is that we feel, at least for the opening years as we gain experience with the market and with waste treatment, that this system will suffice to move the early wastes to our facility. If it does not, I have indicated that we have included in the initial environmental assessment, which is now with the ministry and subject to the hearings, our plan for establishing additional transfer stations, if they should prove to be necessary at some time in the future. We would hope to have that general plan approved by this hearing process, and then if we ever had to do that, clearly we would need individual projects, which themselves would be subject to the full provisions of the Environmental Assessment Act in that eventuality.

Mrs. Marland: When these locations are now referred to as transfer stations or sorting stations or interim storage stations, as you just said, licensed and supervised through the licensing branch of the Ministry of the Environment, where is the real relationship between OWMC and the MOE?

What I have heard and what I think is confusing to the public is that you are given a mandate as specified in your articles and objectives and priorities of the corporation. It seems from the answers in the past few days that your mandate is narrow in one respect, inasmuch as I do not see any relationship ongoing with the ministry. The questions that we asked that you refer are either under the Ministry of Transportation or the Ministry of the Environment or the municipal levels of government's jurisdiction. There is referral and deflection away from OWMC. I have to ask, when the government established the Ontario Waste Management Corp. was it not so that you would have the responsibility as outlined in your corporate description?



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Yet if those ministries—highways and so forth—are still faced with the responsibility of the management of hazardous waste today, meaning management in terms of trucking routes and protecting the public through safe conveyance of those materials, where is the mandate being fulfilled by OWMC other than this—which has already been well described—very protracted process of establishing the physical plant for the treatment a decade later?

Dr. Chant: The mandate of the Ontario Waste Management Corp. is spelled out in the act and in the series of orders in council that have flowed from cabinet since 1981 and in the memorandum of agreement with the ministry.

Virtually everything we do within that framework is subject to approval by some overriding authority to OWMC, whether it be the minister, Management Board, the committees of the Legislature, or indeed the Legislature itself. We have no authority in a vacuum, on own initiative, to establish our policies. They are all subject to approval. Our price lists and our business plan, as I mentioned this morning, are subject explicitly to approval. Our expenditures and our budgets are subject to approval and properly so.

But the mandate, as I think it is widely interpreted, is pretty clearly spelled out. It does not make us responsible for all aspects of waste management in the province. Far from it. We do not have a monopoly. There is no intention of putting Tricil or some of these other operators out of business. I do not think I can explain it more clearly than that.

Mrs. Marland: It says here very clearly that your "fundamental purpose is to make a major contribution to the solution of the waste management problem in Ontario."

Dr. Chant: Industrial waste management problem, as spelled out in the act very carefully. That is the waste that we are responsible for.

Mrs. Marland: All right. In this printed material the word "industrial" is missing. I will add it. Then really the first seven articles describing what that means in terms of the public are all related to this nonexistent plant.

We look at your budget, and maybe we could just refer back to that for a moment, and we look at the escalation from 1986 to 1988. By the way, I will place on the record my apology for the error in the calculations of the percentage increase of the salaries and benefits which yesterday I stated were calculated at 18 per cent. They are somewhere around 10.7 per cent. But when we look at item (b), transportation and communications is up 32.3 per cent.

Dr. Chant: From 215 to 289 is not 33 per cent, Mrs. Marland.

Mrs. Marland: I suppose the difference might be that it is compounded, but the difference between 215 and 234 is 8.8 per cent and the difference between 234,000 and 289,000 is 23.5 per cent, which in total adds up to 32.3 per cent. In any case, it is an appreciable increase, and I would like to know what that 32.3 per cent increase in transportation and communications is for the Ontario Waste Management Corp. since 1986.

Dr. Chant: Unless Mr. Bentley has the specific figures at his command here today, I think I would have to take that question under advisement. It is a level of detail I did not anticipate.

Mr. Bentley: I do not have the detailed backup.

Mrs. Marland: You did not anticipate being asked about your budget?

Dr. Chant: We fully anticipated being asked about our budget, but not at that level of detail. We are perfectly happy to provide an answer.

Mrs. Marland: What would you have which is relevant to item (b) on this area of expenditure?

Dr. Chant: I can give you a general answer. If you turn to the budget statistics—

Mrs. Marland: No, I am sorry. Excuse me. If Mr. Bentley is responsible for it, Dr. Chant, I would like a specific answer. I think it is a grave increase in expenditures.

Dr. Chant: I will have to take it under advisement and provide that information tomorrow.

Mrs. Marland: Unfortunately, we are not sitting tomorrow. What information about your budget did Mr. Bentley bring?

Mr. Bentley: I do not have the detailed makeup of the figures here for the three years but I can say in a general way that the makeup of the amount under transportation would be—there is a certain amount of travel in there and expenses. Communications would be our telephone and our mailing. I could break it down into full detail. I do not have the three-year breakdown here with me but I would be glad to supply it.

Mrs. Marland: Certainly we would like that information supplied to this committee. I am floored that this public corporation is here before this committee without detailed information about how it spends its \$69 million. I could interpret under transportation and communications that there would be some travel costs in there, to use your own description; and of course I am aware that you do communications with the public. I am aware that you use the telephone.

But I really have to wonder how you get a 32.3 per cent increase from 1986 to 1988. It is amazing to me, having sat as a member of this committee—I am not today; I am a substitute member today in my role as Environment critic—when we have reviewed agencies, boards and commissions in the past, we certainly have always been furnished with very complete details of the financial expenditures of those agencies, boards and commissions.

Dr. Chant: I can give you one statistic which would account for a major part of that increase. Three years ago, our mailing list to all of the people in the province who had expressed interest in the activities of the corporation, who asked to receive our newsletter and other technical information, has gone from about 10,000 people to 80,000 people.

The postage and printing costs alone in servicing that expressed need by the people of the province would account for a substantial part of that increase. It costs money to do that. The alternative is to say to people, "I'm sorry, we can't provide you with information," and I think that is a less desirable situation. An increase in our clientele with respect to information and material provided by the corporation would account for a very major part of that increase.



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Mr. Chairman: I think the simplest way to solve the problem is if you would do a three-year analysis, from the \$215,000, and indicate where it was spent on each line and provide the committee with a breakdown of all expenses in that category.

Mrs. Marland: Thank you. Just reverting for a moment to my questions yesterday about the salaries and the salary scales, I know that as a result of the auditor's report in 1986 you contracted a consultant to review the salary structure for the employees of the Ontario Waste Management Corp. Is that correct?

Dr. Chant: No, it is not. We had that arrangement with Hay Associates going back to the very beginning; we did not hire it subsequent to the auditor's report. They have been working with us, I think, for six years now.

Mr. Bentley: Since 1982.

Mrs. Marland: Hay Associates?

Dr. Chant: Hay Associates, yes.

Mrs. Marland: For six years you have been paying a consultant to review your salaries?

Dr. Chant: To review the whole personnel administration, including salaries administration. I might point out that the same consultant is hired by the Provincial Auditor for the same purpose, only in a broader sense, for the civil service.

Mrs. Marland: But for six years you have had the same consultant reviewing the salary structure of your employees?

Dr. Chant: No, I said the whole area of personnel policy. Once the consultants had set up our classification system, position descriptions, recruitment procedures, salary structures, part of that, they now come in once or twice with Mr. Bentley, when we are doing our periodical annual review of promotion, salary increase and that whole area. We make very little use of them, but the Hay system is generally conceded by the personnel specialists around this country to be among the leading consulting firms in Canada. They set up a system for us and now they come in and help us maintain it for a few days a year.

Mrs. Marland: What does it cost to have the firm Hay Associates review the personnel management of the Ontario Waste Management Corp.?

Dr. Chant: What was the cost of the annual review this year, Mr. Bentley?

Mr. Bentley: The annual review this year would be under \$2,000. Being a member of the Hay system, you receive the information as to what other salaries are being paid by groups of companies. It is really the annual comparison of what is happening in the area that we are involved in, what is happening to pay scales in other places. In order to ensure that we are right in the marketplace for the salaries we are paying, we get the benefit of their studies, and this is what we pay for.

Mr. Jackson: I hired Hay Associates back in the very late 1970s and also fired it two years later because it was (inaudible) to our organization. However, we ended up with two unions as a result of our experience with Hay.

Mr. Furlong: Is that bad?

Mr. Jackson: I am interested in the period, as to why it was four years before Hay was in a position to recommend the substantive increases. If I try to read the rationale carefully, it was because you were wishing to maintain competitiveness in terms of expertise you were developing and competing with.

Dr. Chant: That is partly correct, yes.

Mr. Jackson: Yes. Why then was it between 1982 and 1985, essentially that three-year period before we started to see the substantive increases in the salaries?

Dr. Chant: I do not think there has been any step-wise substantive increase in salaries. Hay annually has reviewed with us, as part of our salary increase decisions, what is going on in the list of 40 or 50 companies and other crown corporations that it compares us to. But they do not determine our salary policy; they simply advise us as to what that collection of other employers is doing. Our final salary decision is taken partly on that basis and partly on the basis of the guidelines that are laid down by the government and what is going on in the civil service. Hay is simply a provider of information, not a determinant or a decision-making body there.

Mr. Jackson: It is not quite that simple. I have read the auditor's report and I have read your response. The auditor was somewhat critical, if I can put that value on it, with respect to your being compared to such a small market, which is in the field of developmental environmental activities, which you are in.

Dr. Chant: Plus other crown agencies.

Mr. Jackson: In terms of other crown agencies, we did not see those kinds of substantive increases. I know you do not agree with me that they were substantive increases, but you are one of the few people who does not agree with the notion that they were substantive increases.

Dr. Chant: Just to set the record straight, our salary increases in the Ontario Waste Management Corp. have consistently been slightly less than the civil service ones in the provincial government, year in and year out. That is a matter of record.

Mrs. Marland: What did you give this year?

Dr. Chant: We gave 5.4 per cent.

Mrs. Marland: I think the Ontario civil service got 4.6 per cent this year.

Dr. Chant: No, I think it was in excess of six per cent, was it not, Lorne?

Mr. Bentley: I am not sure whether the government at the moment has completed it, because although it normally goes on a January 1 date for



increases and we go on an April 1 date, there was no time in that first quarter of this year that we could get information from the government, because it had not been decided. Most of the increases for the government will come through in August and September, so I do not think there is yet a known rate; at least, I am not aware of it yet.

Mrs. Marland: So if there is not a known rate, how can you sit there and say that you gave less than the government gave?

Mr. Bentley: Because that has been our past history. Also, this year we depend on the Hay evaluation system. Our board of directors, the compensation committee, sets the rate that it feels is reasonable, and this is based on the statistics we have gleaned from the Hay work of the past year. They keep it up to date as to what is going on in the group of companies that we examine and want to stay competitive with.

Mrs. Marland: With respect, it is very hard to sit here and have you say that you have paid lower increases than the government pays its civil service. You have given your staff an increase this year and you do not yet know what the government increase is this year, which I respectfully suggest is 4.6 per cent, and your people have 5.4 per cent. In any case, it is a very unfair system; it is a very unfair argument that you are giving, in my opinion.

Mr. Bentley: Mr. Chairman, if I may comment, the Hay system is an accepted system around the world. In fact, for the salary comparability in the studies by the government, Hay was one of three that were used, along with William M. Mercer Ltd. and Towers Perrin Forster and Crosby. We have been with the Hay system since 1982. I think, as Dr. Chant has said, that our increases for the past four years, on average, have been less than those of the government. We go ahead and we move on April 1 and we do it with the best intentions; and it is based on the Hay system, which we feel is a good system and has served us well.

Mrs. Marland: Do you feel good about the fact that you have given 5.4 per cent this year?

Mr. Bentley: Yes, I do.

Mrs. Marland: The rate of inflation this year is 4.3 per cent. Do you feel good about spending public money to that extent on salary increases for your people?

Mr. Bentley: On the basis of our reviews. I will add another thing: We do not have what is known as any sort of inflation payment. It is strictly based on performance and merit, so there is no inflationary payment, not as there is in other areas. That is an overall rate. We have some people who receive no increases and we have had other people who have received an increase of greater than five per cent; but, on average, that is what it works out to, and I must say that I am very satisfied.

Mrs. Marland: Somebody is receiving increases, because the overall increases are in excess of 11 per cent from 1986 to 1988.

Mr. Bentley: That is three years.

Mrs. Marland: This is a very significant point, Mr. Chairman, when we are talking about in excess of \$3 million in salaries and benefits. We are not talking about small potatoes when we are talking about the percentage of

increase in these salaries with a budget in excess of \$3 million. I think my colleague has one question.

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Mr. Bentley: May I just add that this is not just strictly increases. There is a turnover of staff, there are different people; so it is not just strictly pay increases that are reflected in that percentage.

Mrs. Marland: Excuse me. Yesterday, Mr. Bentley, in answer to one of my questions, you or Dr. Chant told me that the increase in the salaries budget was because of the increasing experience and expertise of your staff. Now you are telling us that there is a turnover that affects it. It cannot be both.

Interjections.

Mr. Bentley: It is a combination.

Dr. Chant: The increasing expertise is what leads to promotional increases. When you promote people, you normally give them a salary increase because they have moved up to a higher scale. So promotional increases are included in that increase in the three years of note, as well as the regular salary increases based on merit, as well as the mix in staff. As we move closer to the hearings and closer to operations, we have upgraded some areas of staff to higher levels of professional expertise as contract staff drop off and we hire replacements for them to meet our new needs, and obviously some of those people have higher salary rates than others.

Mrs. Marland: Excuse me. You said the contract staff was under services. Yesterday you told me that all contract and professional fees came under services.

Dr. Chant: Yesterday I made a very clear distinction, in my view, between contract employees who are hired as individuals on term contracts and I said very clearly that those are included in salaries and benefits. Under the services are contracting companies: Monenco, all these other consulting firms that we have been dealing with, who have not individual employment contracts, which are under salaries, but the service contracts, which are under that component. So the individuals on our staff who are on one-, two- or three-year contracts are included in the salaries and benefits component.

Mr. Chairman: Mr. Jackson, do you have a supplementary?

Mr. Jackson: Yes.

Mr. Chairman: Or has it been answered?

Mr. Jackson: No. It is on Mr. Bentley's reference to being well served by Hay. I think you have a certain perspective about Hay; it serves you well. I have a certain perspective on Hay because when I was negotiating collective agreements in this province, we brought in Hay if we wanted to get management salaries up. But we just did that one or two years, and that got the salary—because we could selectively pick the pool on which we would wish to do comparisons. Once we were done and Hay had done its work, we were able to get salary ratchettted up at a substantive rate.

But I am having difficulty because I think you are responding to my



statements about pay increases, but I am talking as well about salary adjustments and cost of living. As the auditor's report, which I read carefully in this section, states:

"As at March 31, 1986, of the employee positions assessed by the management consulting firm," that is Hay and associates, "there were 14 employees...identified in the consulting study as earning below a certain minimum level. These employees received adjustments, some retroactively to January 1985," a full year of retroactivity, "to bring their salaries up to the minimum level. The resulting adjustments ranged from three per cent to 33 per cent."

Further in the report the auditor states, "As such, we questioned the corporation's decision to adjust salary levels based on the consulting survey alone." He further goes on to say—

Mr. Chairman: Is this a supplementary to the previous question?

Mr. Jackson: My supplementary will flow from the statement I wish to put on record.

Mr. Chairman: A supplementary usually comes out of a question that is asked and on which you want a clarification.

Mr. Jackson: I asked the question about salary adjustments and they are implying to the record that there have been minimal salary adjustments. I am merely wishing to state that either the auditor's report was incorrect, in which case there should have been a different type of response, or else Dr. Chant is correct that they have not had substantive increases. I was careful to refer to the range as being substantive, which he disagreed with, and the years in which it occurred.

Mr. Chairman: Perhaps he can answer your question.

Dr. Chant: Mr. Chairman, again I have to go back to the distinction between what you might call annual, regular salary increases, which have been in the range of percentages from 4.4 or 4.5 to the 5.4 that was mentioned earlier, and the adjustment of positions. One of the Hay functions is to advise us on salary ranges, advise us on promotion, advise us on redefining positions as people gain more experience and become more senior. Those are the ranges that the member has been referring to, that range from three per cent to 33 per cent or whatever it is. Those are outside and apart from the regular salary increases that I thought was the line of questioning. If I am wrong, then I stand corrected, but that is what I was responding to.

Mr. Chairman: Mr. Dietsch, you have a supplementary?

Mr. Dietsch: Yes. My supplementary is in relation to the salaries you are talking about and the benefit package that is included within there. Is your benefit package for your employees comparable to the Ontario government benefit package?

Dr. Chant: It is exactly the same, with one distinction that is not a financial distinction: Our employees are not civil servants; they are public servants but not members of the civil service as defined in the policies of provincial government. But the benefit packages are identical.

Mr. Dietsch: What types of increases have those benefit packages gone through over this same period of time?

Mr. Bentley: As of April 1, 1987, we went on to the government benefit package and there have been no changes since then. Recently there was announced a forgiveness on the insurance for the next six months. It is an adjustment because of the experience which will be coming into play, so there will be a reduction in what the employee part will be paying. But, as far as our expenditure is concerned, year over year there has been no change since we have been on the government plan.

Dr. Chant: And even that change would not be our policy change; it is a government policy change.

Mr. Dietsch: There has been no increase in the cost of benefits per se?

Dr. Chant: Except as would be applied to the entire civil service of Ontario.

Mrs. Marland: Since my colleague the member for Burlington South (Mr. Jackson) was not able to complete reading into the record the point that I think is very relevant, which is the cost-of-living/merit increases as referred to in the auditor's report in 1986, I think it is important to carry on what Mr. Jackson was reading, and I will read further:

"During the 1986 fiscal year the 10 permanent employees who had received retroactive salary adjustments also received cost-of-living/merit increases. Of these employees, five received increases in excess of 10 per cent.

"Additionally, seven employees who are within the ranges identified by the study received cost-of-living/merit increases in excess of 10 per cent, averaging 15.6 per cent."

I think it is really significant. No matter whether we are talking about promotional increases or about the reclassification of jobs, in this auditor's report he is identifying purely cost-of-living/merit increases. It is just amazing to read those figures for public employees, to use Dr. Chant's term; maybe not civil servants, but public employees funded by the public purse.

Mr. Chairman: Are you finished?

Mrs. Marland: No, I am not; I have a question. If Dr. Chant is going to speak, I might as well give him a question, since there is a lot to cover. While we are dealing with the employees, could you tell us how many employees you have on staff who are paid out of this \$3-million-plus budget?

Dr. Chant: The number of employees paid is 64, of whom 23 are contract employees, short-term employees. The number last year was 63; the number in 1986 was 67. So we have reached a plateau in our staff until such time as we have to start recruiting to operate the plant.

Mrs. Marland: Of 64, how many are contract?

Dr. Chant: There are 23.

Mr. Chairman: Would they be consultants?

Dr. Chant: No, they are not. They are people who are hired on a short-term basis, and as individuals. They do not represent a company or anything like that.



With respect, if you were so ill-advised as to seek employment with us, Mr. Chairman, we would probably offer you a two- or a three-year contract as an individual, by name; not a numbered company or anything like that. It is understood when you join us that the undertaking the corporation has made to provide employment has a term to it and we have no obligations to those people beyond the end of the contract. That is clearly understood.

So 23 of the 64 are what you might call temporary employees in that sense, and the other 41, including clerical staff, are permanent employees of the corporation.

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Mrs. Marland: I am sure that when those people were first hired on contract, it was expected to be a two-year or three-year or four-year contract. What it is evolving into, of course, would be renewed contracts until we get this facility on stream. I am sure that originally it was far more practical to have contract staff. You cannot offer very permanent jobs with a crown corporation that was supposed to have had a limited mandate, according to the objectives, which are to get the plant up and operating.

Dr. Chant: Many of our contracts are not renewed. As we move through the phases of our work and have new needs for new kinds of employees, many of the contracts are not renewed. They run their course and that is it.

Mrs. Marland: If many of the contracts are not renewed, then we get down to 41 who are permanent. The point is that if many of the contracts are not renewed, those people would not be eligible for merit increases, because they are on contract.

Dr. Chant: No, they are eligible for annual merit increases in the terms of the contract.

Mrs. Marland: It is unfortunate that we do not have the time to really get into this. I guess I would have to question why, if they are not permanent employees, they have to be eligible for merit increases and cost-of-living allowance. Please do not answer the question, because we do not have the time to get into it, but I think it has to be worth consideration.

I suppose if we were setting it up again, we would set them all up with contract staff and tell them at the outset: "This is the opportunity of a lifetime to do work for the Ontario Waste Management Corp., which is establishing what will become the panacea for waste management in the province. It will be great on your curriculum vitae, but you can't expect COLA or merit increases." I think it is very significant to look at that salary budget and recognize how many people generate over \$3 million in salaries and benefits.

Recognizing that you are where you are today after seven years, reconsidering what we have heard in the past two days about where we are going to be in another four years' time and hearing about where your costs have been related to the preparation of the environmental assessment documents; now that all that work has been done, now that the documents, to use your own words, are in with the ministries and it is all out of your control; now that the Ontario Waste Management Corp. has done its homework and the documents have been prepared—I think it is significant to note that West Lincoln was selected in 1985; it has taken three years to prepare those documents, which in itself is a question, I think—but now that all that is done and you said

that, I do not actually have your quote from yesterday, but it was something to the effect that it is out of your control now, the timing is up to the ministries, it is the ministries which are doing the reviewing and the process will take on from there.

What I would like to know, now that the reports are complete and all those heavy front-end costs of consultants, studies, soil testing, site analyses, equipment design, plant design and so forth are all behind you, is why could we not see a drop in the estimated budget for this year. You said you handed all those documents over in February. Why is it that, instead of a decrease in the budget of OWMC, we see an increase?

Dr. Chant: The answer is that, although we have accomplished many phases of our work, the financial requirements do not change; they change in nature, but they do not change in amount. We have very heavy demands now and for the foreseeable future in the preparation of witness statements. There are 48 technical witness panels that have been put together in anticipation of the hearings, each one with three to four technical experts of one kind or another. Each one must prepare a written statement of the testimony it will be presenting, often extending to perhaps even two weeks on the witness stand during the hearing. That is a fairly common experience.

All those people have to be paid for the work they are putting into that. It is different from the work they were putting into the environmental assessment, but it is just as demanding. There is the witness preparation. Each of those panels has to meet with lawyers and be informed as to the nature of the hearing process. Some of them are from Europe, from the consultants there, who are not familiar with our hearing process.

We have to have our consultants and our professional staff respond to all the questions that are asked by the reviewing agencies. Yes, we sent our environmental assessment to the ministry in February. We have written interrogatories and questions, very legitimate ones, of a highly technical nature about that thick that we have received from the ministry, and we will get more from another 23 to 25 government agencies and ministries. The Ministry of Agriculture and Food obviously has questions about this, as well as the Ministry of Transportation, the Ministry of Health, the Ministry of Labour and so on. On all of that we have to maintain the technical resources to respond accurately and on time.

The continuing design work that we spoke about yesterday, the preliminary engineering work continues with Monenco, again in anticipation of the hearings but, we hope, in anticipation of the detailed design and constructing the plant.

Finally, the cost of the hearings: One of the members, with his experience in Halton, mentioned the high cost of the hearings for the garbage dump in Halton. I forget the actual figure, but I think it is running at \$1 million a week or something like that.

Mr. Jackson: No, not a week.

Dr. Chant: A month, is it? It is a lot of money.

Mr. Jackson: Up to date.

Dr. Chant: Okay, it is a lot of money, and we have to build that into our budgets for 1989, 1990 and beyond. So the needs change very, very



much, but we still have to keep the professional team together, and we now have to gear them up for the hearings, having accomplished the environmental assessment itself.

Mr. Chairman: Do you have any more questions, Mrs. Marland?

Mrs. Marland: Do you have a long list?

Mr. Chairman: We have 10 minutes left. I have some myself that I wanted to ask, but I will take whatever you have left.

Mr. Fleet: On a point of order, Mr. Chairman: I do not know how many others there are.

Mr. Chairman: I have no more on my list.

Mr. Fleet: I have one from myself. I do not know if there is anybody else.

Mr. Chairman: You had not indicated to me that you wanted to speak.

Mr. Fleet: Actually, you indicated to me that you were putting me on the bottom of the list. I presumed I was still there and had not fallen off totally.

Mr. Jackson: You are on it now.

Mr. Fleet: It should be shared.

Mr. Breaugh: This is kind of a merit pay idea.

Interjections.

Mr. Chairman: Mrs. Marland has the floor. Would you continue, please?

Mrs. Marland: You are going to continue the design of the facility without the approvals for it, is that correct?

Dr. Chant: Not the detailed design; the preliminary design, in anticipation of the hearings. I think the hearings officers will require a considerable level of detail about engineering at this preliminary stage.

Mrs. Marland: I thought you had submitted the preliminary design.

Dr. Chant: We have submitted a design and operation report about that thick as part of an environmental assessment, but the engineering design at the preliminary stage that lies behind that is considerably more massive.

Mrs. Marland: You are saying that the preliminary design for the hearing was submitted in February.

Dr. Chant: There is a report called the design and operation report that is a synthesis of all the design work that has gone on. We could not possibly provide, as part of the environmental assessment, all of the preliminary blueprints and preliminary design documents, but they are available for subpoena or bringing forward to the hearings, depending on the degree of detail that the hearing panel wishes to get involved in.

Mrs. Marland: But the point is, it is the same thing I asked yesterday. On the one hand, you are saying that you need only a synthesis. How can you have that if you do not have it on the basis of something that is already complete?

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Dr. Chant: I do not understand the question; I am sorry.

Mrs. Marland: How can you have a synthesis of something that does not exist?

Dr. Chant: The preliminary design phase of engineering began in 1982, I believe, when we went through the tendering process and selected Monenco Consultants. It will carry on through the hearings, partly to service the needs of the hearings as more detail comes forward, depending on the wishes of the hearing panel and the interveners, and as a prelude, hopefully, to the detailed engineering design that would follow on after that.

Mrs. Marland: What is the name of the company you selected?

Dr. Chant: Monenco. Its offices are in St. Catharines.

Mrs. Marland: All right. Are they connected with the European consultants?

Dr. Chant: They are not connected directly, as a subsidiary or anything like that. They do work with them to get design input from the European consultants, but they are primarily what is called EPCM in the jargon—engineering/procurement/construction management. It is our prime engineering consultant, the lead consultant in the engineering area, and works with the Europeans and many others as well.

Mrs. Marland: Okay. Are the European consultants giving their expertise based on existing plants in Europe?

Dr. Chant: Yes.

Mrs. Marland: So it gets back to the question of, if they are giving their advice, they are giving their advice on their design?

Dr. Chant: Pardon me? -

Mrs. Marland: If they are giving advice on existing plants in Europe, those plants which exist in Europe have engineering design obviously.

Dr. Chant: Yes, and technical improvements to those designs which go on all the time.

Mrs. Marland: Right; so why are we not just buying that?

Dr. Chant: Again, we are engineering for Ontario wastes, for the Ontario environment and for the needs of this province. Our rotary kiln will not be identical with the rotary kiln of Biebesheim or in Finland or Sweden or any of the other places, partly because of that necessity to tailor-make to our needs and conditions, but also to incorporate the best technical improvements that are made in the existing rotary kiln, so that we can start from that higher base of efficiency and effectiveness.



Mrs. Marland: Well, the only way you can change rotary kilns in any great way is the size and the type of fuel injection.

Dr. Chant: No, the type of waste injection. The materials handling is the key to this. I have a staff member visiting Finland this month, as a matter of fact, to look at the design improvements the Finns have made in upfront material handling subsequent to establishing their kiln about two years ago. These kinds of development improvements in handling waste, in getting the right mix, the right material and the right containers into the kiln is going on all the time. Obviously, our designs will incorporate the best state of the art at whatever time we arrive there.

Mr. Chairman: Thank you. I would like to move on now if I may. Have you pretty well finished or would you like another hour?

Mrs. Marland: No, I would like another week, particularly after I read yesterday's Hansard, but I recognize where we are with the time.

Mr. Chairman: Thank you. I will recognize Mr. Fleet then.

Mrs. Marland: Just one second, please, Mr. Chairman. When we are looking at \$3 million of salaries and \$12 million of services, the ongoing operational costs of Ontario Waste Management Corp. in the areas we have tried to briefly get into this afternoon, salaries and so forth, not the least of which is salaries, they are pretty scary figures when you consider what we currently have before us, as my colleague, Mr. Breaugh, was saying this morning. But there is existing technology and there can only be so many kinds of kilns. Rotary kilns are rotary kilns, whether you are manufacturing cement or you are burning garbage.

Dr. Chant: Excuse me, they are not. A cement rotary kiln is a very different piece of machinery from an industrial-waste-destroying kiln, very different, much larger and designed for a totally different purpose.

Mrs. Marland: Right, and if you had let me finish, I was going to say that rotary kilns are rotary kilns. They vary in size, they vary in fuel injection and they vary in temperatures, depending on fuels, the length of burn and the duration at different temperatures. Those are all technical details that make one rotary kiln different from another, but basically a rotary kiln is that, a rotary kiln.

Dr. Chant: I am sorry. I cannot accept that.

Mrs. Marland: It is hard for Hansard to pick us both up. I am sure you can answer my question when I have finished.

The point is that knowing there are existing facilities using rotary kilns all over the world, recognizing that your own corporation is using European consultants, there is a base for all this information. I hope we are not spending the money of the taxpayers this province recreating the wheel.

Dr. Chant: I can assure you that has been a deep consideration of ours from the beginning. If we were designing the world's first rotary kiln, you would be looking at a budget much higher.

Let me just make one point: take retention times of the waste being incinerated in the after-burning chamber; that is after the rotary kiln, the rotating barrel has done its part. In the waste incineration field, you are looking for a minimum of two, preferably three seconds retention time at the

very high temperatures when the wastes have been volatilized at that point. That is one of the most expensive components and one of the most tailor-made design components. It is the component that requires the most up-to-date technology from wherever around the world, in our rotary kiln.

That consideration is a very minor consideration in a cement kiln that is designed for a very different purpose. Yet the cost implications and the design implications are fundamentally different.

Mr. Fleet: Perhaps we can make this a little shorter because I did discuss the nature of my concern with you briefly at the lunch break. I wonder if you can simply elaborate on the issue of the position taken by your corporation about whom you will do business with when you are open. This came up in the context of free trade earlier. You indicated that there is a policy, enunciated by yourself, and I think you said supported by the ministry, that you will only be doing business with those companies within Ontario.

Dr. Chant: That is correct.

Mr. Fleet: Can you just indicate what statutory authority there is, or on what legal basis that decision is made?

Dr. Chant: I do not know how legal the definition is. It was a decision by our board of directors. It has no statutory authority, if that is what the member is seeking. Of course, the government of the day, as I indicated this morning, could change the approach to the Ontario Waste Management Corp. and instruct us to take a different policy, which is where I would have a personal problem, I think, in deciding my own role in this.

We will not market in the United States. We will not have contracts with American waste producers, except under the reciprocal arrangement I indicated this morning. But there is no law that protects me or enshrines OWMC in having taken that position. Fortunately, to this point, the ministry and the minister happen to agree with that position, but that of course can change, as you people are more aware than I.

Mr. Jackson: Excuse me, and not to put too fine a point on it, I indicated the nature in which I believe our Minister of the Environment might feel able to act responsibly; it would be to assist with the cleanup of existing sites that are posing a threat to our water system.

I made that point clear because, as I was discussing, I wanted you not to be Donald Chant at OWMC; I wanted you to be Donald Chant, the zoologist who is an environmentalist, who would agree that governments at both levels, on both sides of the border, should be concerned about the cleanup of the greater Niagara area and that the proximity of this facility certainly would come up in discussions at any of those levels.

I am not saying we would become a source for industrial abusers in Niagara—the Americans. I was referring to participating in the cleanup that is a serious issue which this and all governments better get on with.

Dr. Chant: That is helpful. It clarifies my understanding of the question. I agree totally. I think the interesting question is this: if there were a site needing cleaning up on the American side of the Niagara River, and we all know there is, what is the role of the Ontario Waste Management Corp.? I would have to say I would welcome being instructed by the government of



Ontario to play an active role in such a foreign cleanup if it were contaminating the Canadian environment.

Because of the politically sensitive nature, the fact that it would cost money to do that, I would have to be instructed by the government and know I had the full support of government before embarking on such an endeavour. But I agree totally with Mr. Jackson's comments. I think that is a good point.

Mr. Chairman: I want to thank you for appearing before the committee over these past two days. It has been an exciting process. The one major concern I still have is with regard to the environmental assessment hearings. I hope we can some day get some policy whereby the government and the people of the province can proceed with these hearings. I know it was one of the greatest concerns Mr. Breugh had, and I would hope there would be some recommendations. We may be making some. Thank you, once again, for attending.

Dr. Chant: Thank you, Mr. Chairman. If you do wish us back—you indicated that option is always available to you—we would be glad to come back.

Mr. Chairman: Thank you.

The committee will now go in camera, to discuss and to be briefed with regard to our further deliberations. This committee is adjourned.

The committee continued in camera at 3 p.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO FOOD TERMINAL BOARD

WEDNESDAY JANUARY 25, 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: ??

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Marland, Margaret (Mississauga South PC)

Martel, Shelley (Sudbury East NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Collins, Shirley (Wentworth East L) for Miss Roberts

Dietsch, Michael M. (St. Catharines-Brock L) for Mr. Ballinger

Also taking part:

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Mahoney, Steven W. (Mississauga West L)

Clerk: Deller, Deborah

Clerk pro tem: Arnott, Douglas

Staff:

McLellan, Ray, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Food Terminal Board:

Melara, Joseph, Vice-Chairman

Carsley, Bill, General Manager

Nicholas, I. Bruce, Secretary-Treasurer

From B and G Vetere Wholesale Ltd.:

Pazulla, Wolfgang J., Solicitor; with Reble, Ritchie

From Lakeshore Fruit (Toronto) Ltd.:

Simon, Helen

Simon, Harvey



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, January 25, 1989

The committee met at 10:13 a.m. in room 228.

AGENCY REVIEW: ONTARIO FOOD TERMINAL BOARD  
(continued)

Mr. Chairman: I call the meeting to order. The people from the Ontario Food Terminal are with us once again. Perhaps they have some brief remarks they would like to make with regard to some of the reporting we have done, some of the observations we have made. Mr. Carsley, are you speaking, or who is leading off your delegation? Did you have a presentation you wanted to make?

Mr. Melara: Last Wednesday when we were in, I believe we left a copy with the people here of what the board had accomplished to that point. We wonder if you have any questions. It is four pages long; it is rather lengthy.

Mr. Carsley: If I may, Joe, this was an interim report to the standing committee on government agencies re recommendations made in the committee's report to the Ontario Food Terminal Board in June 1988. I believe every member of the committee got a copy. I guess our vice-chairman is asking if there are any comments at this point based on our interim report.

Mrs. Grier: I had a number of questions arising from that. I just cannot find them all.

Mr. Chairman: Perhaps I can start off. At what stage are the C units? Are they in progress? What has happened with regard to the C units?

Mr. Melara: We had an original list of about 65 applicants who were looking for C units, and tenders were put out. When the tenders were advertised, we had 45 or 47 picked up and we had only eight tenders returned. Of the eight tenders returned to us, one was successful and seven were below; I think three of them were more than \$200,000 below the required amount. The board decided at its last meeting that it would leave the C units at present.

Mr. Chairman: They which?

Mr. Melara: They would just drop the C units for now. The board felt it would require at least 10 units in order to create some type of market. Without receiving the 10 they thought they would require to build the building and with one bidder only being successful—of the eight, we had one successful, two about \$100,000 low and the remaining five \$200,000 to \$400,000 below the required price.

Mr. Chairman: Have you had any negotiations with the Ministry of Agriculture and Food with regard to the leases which are in place now, as to how you are going to try to get out of some of the long-term leases? Has there been any negotiation on that?

Mr. Melara: We have had one meeting with the ministry and we have had a meeting with the tenants. We got direction from the ministry and we have

taken that a step further to a tenants' committee meeting. That is as far as we have gone. We are looking now to have a second meeting with the tenants.

Mrs. Grier: I would like to explore the C units a bit, then talk about the leases, seeing we do not have all that much time to do it. On the C units, I frankly am very concerned that you arrived at a reserve bid of \$615,000 for a C unit and about the whole way in which the tender was offered. I am looking for some rationale from you about why you went for a tender which required the ultimate lessee to put up the capital cost and why the capital cost was as much as it was.

The information I have had from a number of people is that 43 people paid something to pick up the tender documents and only eight submitted. What I am hearing from some of those who did not put in a bid is that the way the tender documents were drafted and the fact that they did not know what the reserve bid was, whether it was \$100,000 or \$600,000, really inhibited people from bidding. Can you give me a rationale for why you went through that process?

Mr. Carsley: There were two main reasons why the tender method was selected. The first is that because of the situation regarding our own finances, as there seemed to be a rather great demand for these units, it was felt that by tendering the board might gain some extra money to be able to put into the parking deck. In the parking deck there is also the site development, which was an additional cost. That was one of the reasons.

Mrs. Grier: Can I explore that one? What is the rationale for having the potential bidders for the C units put up the capital cost for a parking deck which was going to be of service to the entire terminal?

Mr. Carsley: It was set up by the board so that the cost of the deck would be borne one third by the C unit people, one third by the roadway and gate cost centre, which included charging something to the buyers for a buyer's decal, and the other third to the farmers' market and the parking deck. It was divided into three. So the C units were not expected to pay for the complete cost of the deck.

1020

Mrs. Grier: What about the A and B units?

Mr. Carsley: As you know, the A and B units have a lease which outlines very specifically what they can be charged for in their cost centre. They would not be charged directly. However, the present A and B units are the major users of the terminal; I would venture to guess that over 75 per cent of our parking spaces are paid for by the A and B unit tenants.

Those other cost centre charges were going to have to go up and the A and B unit people were going to be involved in having to pay additional amounts for parking mainly. Also, as you know, we do have a toll charge at the roadway and gate, and that was going to be increased. The people who are really responsible for bringing most of the trucks into the terminal are the A and B unit tenants.

Mrs. Grier: Okay. So the parking unit was one rationale. That was the first reason for this.

Mr. Carsley: Yes. The other thing our board decided was that the



free market should prevail, and this would be, shall we say, a true expression of the interest in these units. That was the other reason we went with the tender the way it was.

Mrs. Grier: What was the attitude of the Ministry of Agriculture and Food to the fact that you chose to go in this direction?

Mr. Carsley: They endorsed it.

Mrs. Grier: Because they did not have to put up any money for you to go for the C units presumably, if you were doing it this way.

Mr. Carsley: One could say that. We have discussed the fact that we are not, in the immediate term anyway, going to get a grant from the ministry.

Mr. Melara: Had we built the parking deck, we would have had to look to the ministry for some guarantee of the parking deck part of it. They would have had to guarantee the loan.

As Mr. Carsley says, one third of the parking deck was being charged to the new units. But the present parking facilities are probably sufficient for what is in there now, so in the event that new units do not get built, they probably will not put additional parking in. The parking was almost a must in there with the new C units.

Mrs. Grier: So the parking was designed merely to serve the C units?

Mr. Melara: Primarily.

Mr. Nicholas: If I could answer that, one of the rationales for the extension of the parking deck is that the site where the existing C units would be located is an area where there are trucks and cars parked. We had advice from our architects that you could not build the C units without extending the parking deck. That is the rationale for all the discussion about the parking deck and the rationale about who pays what portion.

When you asked the question originally and asked about the number of respondents to the tender, I think it is important to note that in that tender package was a copy of the new proposed lease for the C units, which followed all of the recommendations of this committee. That lease was well tailored to the advantage of the Ontario Food Terminal Board and followed all the recommendations of the committee.

Mrs. Grier: Let's talk a bit about the lease. On what basis did you come to the term of the lease, which was 25 years? I am not sure that was one of the recommendations of this committee, that the new units get a 25-year lease.

Mr. Nicholas: The term of the lease corresponded with expiry of the current 30-year A and B term. The board picked that date so the two lease terms would come together at the same time.

Mr. Carsley: I think we discussed this when we talked before, Mrs. Grier. One of the things is that we had to have a reasonably long-term lease, because not only were we asking the tenants to pay for their units essentially as they were being built, but they were also going to have to make an investment in refrigeration and some mezzanine office space which could have amounted to maybe another \$200,000 a unit. With this investment, it was felt

we could not justify anything but a slightly longer term lease than the committee was recommending.

Mrs. Grier: In your estimate of the cost of the office, which you included in the tender, you are looking at \$75 per square foot as the cost of building this office. Are you telling me that in addition to that the leaseholder is going to have to come up with \$200,000 to make that into an office?

Mr. Carsley: No. You understand how it works in the terminal. Each unit has a mezzanine office as well as an office upstairs. The particular office we are talking about in that reserve bid amount is the office that would be upstairs, 640 square feet plus the common area; that is how you come up with the 6,999 square feet or something like that for the total office space for the 10 units. That is the accounting office that would be upstairs. It would be up to the tenant to build the type of mezzanine office he wanted. Some people might only want 300 square feet. Someone might not want a mezzanine office at all. That would be on top of what is in the actual reserve bid, the \$615,000.

Mrs. Grier: One more, if I may, Mr. Chairman, because I am sure other people have questions.

At the board meeting where it was decided not to go ahead with the C units, where it was decided that because only one had met the reserve bid you would not proceed, I notice from those minutes that Mr. Collins, Mr. Melara, Mr. Coppa, Mr. Collver, Mrs. Dekker and Mr. Giles were all there. How many of those members of the board now hold A or B units?

Mr. Carsley: Right now, two members have A or B units. No, I am sorry. It is basically just one, Mr. Melara, our vice-chairman, because Mr. Giles is an employee of Food Services of Canada and does not have an interest.

Mrs. Grier: How many of them have active interests in the terminal? All of them?

Mr. Carsley: Have active interests? Of course, as general manager of Food Services of Canada, Mr. Giles would have an active interest in the terminal. He operates an A unit.

Mrs. Grier: They operate an A unit. Is anybody else connected with an A or B unit?

Mr. Carsley: Mr. Melara, our vice-chairman, who is with us today.

Mrs. Grier: But Collins, Coppa, Collver and Dekker do not.

Mr. Carsley: No.

Mrs. Grier: I see. I notice that neither Mr. Melara nor Mr. Giles declared any conflict of interest in making that decision. I wonder if that had been discussed, if as people interested in A and B units they did not have a very specific interest in how the leasing and arrangements for the C units would in fact be drawn up.

Mr. Carsley: No conflict of interest was declared at the meeting.



Mrs. Grier: Thank you very much.

Mr. Chairman: As it stands now, the C units are not going ahead. Correct?

Mr. Carsley: Correct.

Mr. Chairman: You had a meeting with the ministry back in October 1988 with regard to the freeze on the lease terms?

Mr. Carsley: Yes. Do you wish us to elaborate on that?

Mr. Chairman: Yes. I would like to find out if there is ever going to be a possibility that there will be a termination some time down the road.

Mr. Carsley: The board is presently in negotiations with the A and B unit leaseholders regarding their leases and the perpetuity feature and the assignment feature. I think recommendation 13 says that perpetuity should be abolished. I believe you asked the board to enter into negotiations with the tenants, which the board has done. That is taking place right now. How successful the board will be, I cannot say.

1030

Mr. Chairman: How long do you anticipate?

Mr. Carsley: We were asked to come back here in a year from the time we first saw you, which would be some time in April, I guess. At that time, the negotiations should be finished and our chairman should be able to give you a full report.

There was one other thing. I guess in the case of Global Fruits and Produce Ltd., which attempted three times to assign its premises, the board turned it down three times. The first turndown was because the board did not have enough information, so that did not go through and Global accepted that. The second time the bidder was Chiovitti Banana Company Ltd. The board turned them down because they already had something like, I think, four units in total and that was accepted by Global.

But the third time the board turned Global down was based primarily on the committee's recommendation that a freeze be placed on assignments. Global took the board to court and the judge decided in Global's favour. So the assignment was made to Bison's Produce Buyers Inc. But the board was at least able to stop the one company, Chiovitti, which had the four units, from obtaining any more units. So that recommendation was followed.

Mrs. Grier: May I have a supplementary on that one because I did want to get into that issue? The date of the turndown that was taken to court was the August 1988 turndown, was it not?

Mr. Carsley: I am trying to think of the dates. No, I believe it was October. It is here in the package. It went to court in November. The judge's decision came to us on November 24.

Mrs. Grier: Your minutes of the board meeting of October 20 say, "Be it resolved that the application by Global, having been considered by the board, the board does hereby withhold its consent." It gives three reasons. The first one is that the proposed assignment was contrary to the

recommendations of this committee. The second one is, "Bison's has failed to produce to the board any satisfactory evidence by way of audited financial statements of its financial means and ability to maintain the lease." Third, "They failed to confirm or satisfy the board that no person or entity already holding a leasehold interest has an interest in Bison's."

So you have the three reasons at that final turndown. What I am asking about is that when you went to court, the court judgement in November was based only on the fact that the recommendation from this committee had no legal standing. I am curious whether or not you argued before the court that the financial evidence was not satisfactory and that the person already holding an interest was not part of it. If you did make that argument, why was it not reflected in the judgement, and given that it was not reflected in the judgement, did you consider appealing the judgement?

Mr. Carsley: I could say this: Bison's Produce did fulfil those other obligations before the thing went to court so that the only thing left, and our lawyer said the only thing we had to argue on, was the recommendation from the standing committee. We could have appealed—you are right—but our lawyer said there was not much point.

Mrs. Grier: Did the Ministry of Agriculture and Food appear at the court case to support your argument against signing the lease?

Mr. Carsley: No.

Mrs. Grier: Did you ask them to?

Mr. Carsley: No.

Mrs. Grier: Why not?

Mr. Carsley: I guess because it was our understanding as a board, and certainly as board management, that we handle our own legal affairs.

Mr. Chairman: I think this is going to set a precedent. I would think it would be one of the most key court cases held for a long time and that if you were serious about getting out of some of these leases, that would have been the time to have really fired all the guns.

Mr. Velshi: I want to ask you a question. What is the square footage of each unit, the C units you were planning to construct?

Mr. Carsley: It is 5,100 square feet, including the office.

Mr. Velshi: Based on that and the costs you were asking the tenants to pay, I think a very rough calculation would be about \$130 a square foot. That is what you were asking for if you divide by \$615,000 or something.

Mr. Carsley: Right.

Mr. Velshi: I am just wondering whether that process was not exclusionary, keeping tenants out rather than inviting them in. Was there any other way of raising that money through financial institutions, which I think you have done in the past? I am not too sure if I am correct in saying that: raising it through a bond or whatever it was. Did you consider any other ways of raising the funds?



Mr. Carsley: Of course there are many other alternatives that could have been taken and certainly the board did consider some of those alternatives. The cost per square foot is high because there are other things. There is about a 14,000-square-foot covered dock that goes in front of these units, plus there was site development, something we had to put in for mechanical and electrical, and also the deck of course. That tends to bring up the cost. Even if you backed out of the office and the cost of building the deck from that reserve bid, you still have only three companies, I think, that would come above the actual cost of construction.

Mr. Velshi: I have forgotten how many units the Oshawa Group owns there out of the 28 units.

Mr. Carsley: They have one and a quarter A units and then they have seven B units.

Mr. Velshi: Is that all they own or do they own something else also under a different name?

Mr. Carsley: Yes, they do. The Oshawa Group owns White and Co., which has two units.

Mr. Velshi: Two A units or B units?

Mr. Carsley: They are A units.

Mr. Velshi: So they own three and a quarter A units and seven B units.

Mr. Carsley: Yes.

Mr. Velshi: I must say, first, that I am sorry I am going to get into this type of questioning but I feel I am getting logical answers, so logical it is difficult to fight them. It reminds me of Mr. Spock in Star Trek. It is so logical there is no humanity to it.

I am wondering whether this was not an exclusionary system to keep others out. I may be entirely wrong but somehow the chemistry is not working here. I find I am not reaching you and you are not reaching me. When people are paying \$1 million to transfer a lease, why would they not pay \$600,000 for a shop? That is \$400,000 less than they would pay to somebody else. Yet there is a demand for the purchase of leases and there was not a demand for this. I am not too sure how I look at that. I do not understand it. Businesswise, it does not make much sense to me.

Can you perhaps explain to me why somebody will pay \$1 million plus for a lease and yet for \$600,000 they have refused the same thing on the same premises?

Mr. Carsley: The logical answer to that is that these leases that were drawn up for the new C units are vastly different in terms of their main characteristics than the present A and B unit leases. They do not have a perpetual feature to them as the present leases do. They were designed with a right-of-assignment clause that gave the board pretty well total control over who the premises were assigned to.

The present A and B unit leases have an assignment clause that is very much slanted towards the tenant and not the landlord. What we are looking at

in these new leases is a lease that was designed on the side of the landlord and not the tenant. That is why, obviously, these new unit leases were not maybe worth the \$1.3 million or \$1.4 million that some people have paid to acquire an A unit.

Mr. Nicholas: If I could answer Mr. Velshi as well, you have to remember that the C units are in an entirely different location. The existing units are in the buyers' court; the C units are 200 feet south of the buyers' court, without a common dock access. They are in an entirely different area.

1040

Mr. Velshi: At what point would you have to make an adjustment between the new lease and the old lease where this would become an effective venture for someone? Have you thought about that, rather than just saying, "Well, we don't want to go ahead with our C leases"? Is there a midway somewhere?

Mr. Carsley: Our own lawyers admitted to start with that they did not think it was a very marketable lease. I guess we are a bit paranoid about leases at the food terminal based on the present leases. This lease had all these safeguards built in, like a fixed term, and the board can arbitrarily withhold assignment if it sees fit and that sort of thing.

Mr. Dietsch: I want to pursue the line of questioning going on right now and then I have some other areas. I do not know if you want to move into the other areas, but we will handle this one first.

Just so I am clear in my mind, there were no construction bids picked up so you are not going to go ahead with the C units. Is that clear? You are not going ahead with the C units.

Mr. Carsley: The board has taken the decision at this point that there was not enough interest. In the tendering process, only one bid came above the reserves, so the board has said, "No, we're not going ahead." That is the board's decision at this point.

Mr. Dietsch: All right. If that be the case and there was only one bid, was any thought given to putting it out for the possibility of private sector money coming in, so the private sector would have an opportunity to build the C units. The way I look at it, if I might clarify it a bit, there seems to me to be an area where the C units would alleviate some of the ongoing leasing stresses present at the market. That being the case, why are we not looking at the opportunity for private sector money coming in? The ministry has said there is no money at this time. Why are we not looking at private sector money coming in to build the C units?

Mr. Nicholas: In effect, that is what the board was asking. We are asking the people who eventually rent from us to put the money up for units in that area.

Mr. Dietsch: But under the conditions on which you offered it, they were not willing to pick up on it. Correct?

Mr. Nicholas: That is right.

Mr. Dietsch: Why are we not reviewing the conditions we offered? Maybe with the conditions we put forward, we hamstrung private industry from



putting the money in. Why do we not review the conditions we offered, to give the private sector another opportunity?

Mr. Nicholas: That lease has basically all the recommendations except that the term is a 25-year term. What else can we negotiate? We are following the recommendations of the committee to make sure the board has control of assignments and subleasing. We even went into shares so that someone could not take it over by purchasing shares. We fulfilled all of those recommendations as per the committee, but you have to remember you have an A and a B lease. I think that may have a lot of bearing on who put the money up.

Mr. Carsley: Could I ask you a question, Mr. Dietsch? By private sector, do you mean getting hold of a developer and saying, "Will you develop these on our behalf?" Is that what you mean?

Mr. Dietsch: Basically, yes.

Mr. Carsley: No, we did not do that.

Mr. Dietsch: The way I have looked at the market is that some difficulties have arisen. Some of the individuals who have long-term control or perpetual control over the leases that are available now are, in a manner of speaking, holding that out to ransom for the individuals who are trying to pick up on operating an ongoing business there. That being the case, maybe the innovative way is to see what money is available in the private sector that would come in and construct. That seems to me to be the next logical step. Is that too simple? God forbid we ever make government simple.

Mr. Nicholas: I would say the board is in a position to be able to put up units and that is basically what we tried to do. What difference would there be with a private developer going in and trying to put them up if people are not willing—of course, the private developer may have a different form of financing, but as far as the construction of it, I think the board is perfectly capable of building units out there to lease.

Mr. Dietsch: I guess my view would be that the board should review those alternatives in order to look at that aspect of it. Do you want to go off the C units into the market stalls or the others?

Mr. Chairman: We can if you like.

Mr. Dietsch: Thank you. That is refreshing. In dealing with some of the conditions in discussions with individuals whom I know use the market and were making constructive suggestions for improving the operation—and I am talking about the outside farmer stalls at this point and the recommendation with regard to market hours—how do you propose to handle recommendation 24 other than to say that you do not feel that opening up a half-hour was the logical step? What do you intend to do about it?

Mr. Carsley: Are you talking about the congestion on the north roadway?

Mr. Dietsch: Yes.

Mr. Carsley: One of the things we have done, of course, is that through attrition, we are not renting those stalls down the Queensway row any more. That will certainly help that situation, because there are not as many growers down there as there were before. The idea is to try, wherever

possible, to place those growers elsewhere. We are not forcing them, but we are putting the ones who are prepared to move into the main part of the market and off the Queensway row. That will certainly help alleviate the situation on that north roadway.

I think also the one serious time of year when it does get very crowded is when the bedding plants are in season. We just have to have extra surveillance out there and make sure we keep traffic moving. It may mean we are going to have to tell the wholesalers on that side, for a period of a half-hour or so, that they just may not move any trucks in or out, because that would be another way of alleviating the congestion.

Mr. Dietsch: As I understand it, and correct me if I am wrong, you have a waiting list for people to get on the outside market as well, do you not?

Mr. Carsley: We do. It is not that enormous at this point. I think we explained to you before that there are a number of people who are on the list. When we approach them, and we know this through past history, only about 50 per cent of them actually take the stall when it is offered to them. I think our waiting list is now about 60 or 70 growers. There may be 35 or so who would be interested in taking a stall when it is offered to them.

Mr. Nicholas: If I may say something on that, when you say the outside stalls, you are really talking about those 40 stalls along the Queensway. Is that right?

Mr. Dietsch: No. I do not want to reduce the number of stalls that are available on the outside market. I want to reduce the congestion that comes in through the road and comes into the market per se. That is what was meant by congestion, the traffic that is coming in and the traffic that is unloading at your dock at the side.

Mr. Nicholas: The outside row, that Queensway row is really an area that developed during the construction for the deck. The prime farmers' market is in the western section, west of the main north-south roadway. The board is trying to bring people back to that particular area. No one applying for a stall would be given a stall along the Queensway row. That is part of the attrition that Bill Carsley was talking to.

Our purpose is to try to get the market in one central location. If we opened up that Queensway row as an early opening, then that would be to the disadvantage of the bulk of the people in the farmers' market, who are in the main part of the farmers' market. There is quite a contention between those in the main part of the farmers' market and those on the Queensway row.

The reason for that is, in the summer months, there is a buyers lineup; you have 300 trucks sitting there and the buyers are sitting. It is a contention that sometimes the loads are sold before people get into the main part of the market. It is an area that we are trying to evolve through evolution into the main part of the market, to get rid of that roadway.

1050

Mr. Chairman: Mr. Dietsch, I would like to draw to your attention that we have about 10 minutes left. I had a request from a member who wants to raise a point and I would like the committee then to rule on that point.

Mrs. Grier: Yes. There are some people here, represented by lawyers,



who were bidders for the C units and who would like to have an opportunity to put their side of that issue to the committee, if that would be acceptable. I also would really like to have time for a question about the negotiations for the A and B lease holders at some point.

Mr. Chairman: I think we want to be fair to the people from the food terminal board. If they would like to stay or if they feel they would like to continue their time and leave, I want to be fair to them. I would like to leave it up to them whether they want to stay and be part of the other presentation that has been requested, if the committee gives unanimous approval to it.

Mrs. Grier: I think they should.

Mr. Nicholas: We would like to stay, if that is okay.

Mr. Carsley: If it is okay with you, sir, we should hear what these people have to say.

Mr. Chairman: That is fine.

Mr. Dietsch: There were only two points that I wanted to make. I was finished and I concede that. I do not need responses but I want the food terminal people to look at these areas. That basically was a special entrance for the individuals who are using the market, the sellers, not the buyers, where they all would come through the same gate, which I think would alleviate some of the congestion.

The other point was in relationship to recommendation 25, in looking at the opportunity on a trial basis of letting some stalls fluctuate in their term lease; for example, June 1 to December 1, looking at berry season. I am looking at the tender fruit people's usage of the market as opposed to the ongoing usage. I would just like you to look at those points at the board level, please.

Mr. Chairman: Thank you. Mr. Velshi, do you have a point that you asked to raise?

Mr. Velshi: Just to comment on Mrs. Grier's request, I am not too sure whether this is the time to have a confrontation situation. It is not fair to us either, because we are not really prepared to ask questions of the type we would like to ask, if we are meeting tenants and their lawyers. My suggestion is that we could perhaps discuss this later. I would be willing to consider this at another session we may have later to discuss this with the tenants and the lawyers rather than now, if you do not mind.

Mr. Chairman: That is why I raised the issue. I want unanimous consent from the committee to proceed with that, if that is possible.

Mr. Breaugh: If I can make a suggestion, I do not think that any kind of confrontation or argument would be useful at this stage either, but we had two other matters on the committee's agenda, which it appears to me we would not have any difficulty in putting off until another day. We do have people here today who have taken the time to come down.

Could I suggest that we set aside the other matters that are on the committee's agenda this morning and we simply give those people who are interested enough to come a chance to appear and state their case, and not enter into the argument today but do that on another occasion?

It seems to me a bit of a shame if they take the time to come and we do not hear them. I just suggest that we take the remainder of the agenda and set it over until another day and that we provide an occasion this morning for other people who have come to the committee to make whatever statement they want to the committee. The committee will not enter into any argument over the matter today but just simply hear the witnesses. Then it will be our judgement call as to whether we schedule more committee time for the matter or not.

Mr. Dietsch: I think Mr. Breaugh raises a valid point. In fairness to the board, it does not have any legal advice here. I think we could certainly hear the presentation, but as far as any cross-direction, I would be very much opposed to that type of dialogue. We would then revert from fairness.

Mr. Chairman: We would not allow that to happen.

Mrs. Marland: I just want to speak for our party. I concur that these people who are here should be heard. We are not just looking at bureaucracy here; we are looking at people's incomes, businesses, livelihoods and jobs. I think it behooves us to hear from all parties on every issue when we are conducting a hearing into one of our agencies, which is purely what we are doing. I hope we will proceed and set aside the rest of the agenda for this morning in order to do that.

Mr. J. B. Nixon: I guess a lot of the members of the committee are surprised, because this was sort of launched on us at the last minute. The committee did not provide notice of public hearings and invite deputations. A member of the Legislature—perhaps I should not say this—has encouraged them to appear today. They are here with their lawyers. Presumably lawyers understand rules regarding notice and rights to be heard.

It just sounds like the committee is being railroaded a bit. None the less, people are here irrespective of the politicians and the lawyers. I think people have a right to be heard, but I fully agree with Mr. Dietsch that we should not get into extensive cross-examination and debate on the merits of what you are saying. If it is the people who want to be heard, then we should be hearing them.

Mr. Chairman: I would propose that what we do is hear the delegation. I do not propose that there should be any questions asked of the food terminal board members by those other people. If they want to sit and listen to their presentation, I think that is fair.

Could I have the consent of the committee to put the balance of the agenda over and proceed to listen to the delegation that is here?

Mr. Miller: Can I ask one question before the board members leave?

Mr. Chairman: They are not going to leave.

Mr. Miller: I mean while they are here.

Mr. Chairman: Sure.

Mr. Miller: There were 30 on the list looking for new use of the facility? Is that right?

Mr. Melara: There were 60 or 65.

Mr. Miller: On a waiting list. You only had three applications?



Mr. Melara: No.

Mr. Miller: Did you have any applications?

Mr. Melara: Eight.

Mr. Miller: None of them were acceptable?

Mr. Melara: One.

Mr. Miller: Does that bother the board vis-à-vis the operation of providing a service?

Mr. Melara: To a point. The board spent pretty well a year of hard endeavours trying to satisfy both parties to come up with suitable C units in a suitable building. I guess they got a little fed up with it when they found that only eight bidders came in. Regardless of whether you were high, low or sideways, we honestly felt disappointed for the amount of work that we had put into it that we would see no more than eight people come in with bids.

Mr. Miller: Are you going to take another look at the reasons why they did not make applications and provide a service? What bothers me is that I think you were given a mandate back in 1946 to provide an opportunity to get fruit and vegetables to a particular area in Ontario. That is what that legislation was established for.

As a farmer—I am not a representative of the Ministry of Agriculture and Food—I think it is important that we try to get Ontario products there. I think it has been financed from the very beginning by the government by grants and through the Board of Industrial Leadership and Development program.

Are you going to go back with recommendations to the ministry that maybe there should be some changes made or that they should approach this from a different direction so these people do have an opportunity?

Mr. Melara: The board at its last meeting just made the one decision. Where they go from there will probably be another board decision. But they looked at it and they spent an hour and a half discussing why, how and where the interest went and they came with their answer.

Mr. Miller: And they made that decision. The question is, are you going to review it to see if you can accommodate it, or is it dead as far as the board is concerned?

Mr. Melara: It would be a board decision at the time. None of us who are here really can be prepared to answer that question.

Mr. Chairman: I would like to make a suggestion to the committee. What I would like to do for the other people who want to appear before us is allow them 15 minutes for a presentation and leave us 15 minutes for questioning them. I will ask the board members of the terminal to move to the back. Then we will give them half an hour after we hear the others for any further questions that we may have for the board. Would that be fair?

Agreed to.

Mr. Chairman: Would the people who want to make the other presentation have a seat up at the table. Please identify yourselves and tell us who you are with or who you are representing.

1100

Mr. Pazulla: My name is Wolfgang Pazulla. I am a solicitor and I represent B and G Vetere Wholesale Ltd., one of the parties who submitted a tender on the C units.

Mrs. Simon: I am Helen Simon, president of Lakeshore Fruit (Toronto) Ltd. in the food terminal. We sublet a B unit and I do not know how you would refer to the premises we have been occupying for close to 26 years, which is in the basement under the storage.

Interjection: Is that a C unit?

Mrs. Simon: Well, we would have called them C units, but if they are going to refer to the units in question as C units, I do not know what we are. We are just under the storage in the basement.

Mr. Chairman: Thank you. Who is making the presentation?

Mr. Pazulla: Perhaps I will start. The comments I would like to make are directed really to the terms of the tender and the fashion in which it was conducted. It is not a legal argument per se, so no one need be concerned about that. It really concerns the practical aspects of it. It is interesting to note that the tender documents were issued over the holiday season, which is not the most opportune time of the year, and the tenders were to be submitted by the middle of January 1989.

If you look at the terms of the tender, particularly the lease under it, it is my respectful submission that it really was designed in such a way that no reasonable business person could have accepted the terms presented other than those people who, quite frankly, were desperate to do so and had no other alternative.

You have a situation where you are asked to pay for the cost of construction of the unit you are tendering on during the construction process. Inherent in that is the cost of financing the upfront moneys, if I can use that term, during the construction process. These people who still have businesses during that same period of time would still be carrying their normal ongoing operational costs.

It is almost like asking a person who wants to buy a house which is not yet built to put all the money down first and then wait. The tender and the terms of the agreement are full of escape clauses to allow for cancellation and termination throughout the procedure. If a permit is not issued by the city of Etobicoke for road access, they can withdraw from the tender document.

Financing is impossible. You are asking someone to come up with \$615,000 cash or certified cheque over a one-year period and you are putting terms into the agreement to lease which make financing impossible or at least allow the board to arbitrarily withhold the consent to financing. Not many banks are enthusiastic about funding that kind of individual loan to someone who wants to buy a unit.

You also have a situation where if someone has a company, is perhaps a little older, wants some security to buy a unit, there are clauses in the documents which preclude by bequest, inheritance, anything, any transfer of shares even in the corporation which might have put in a tender that was accepted and signed an agreement to lease.



Generally speaking, you also have the problem that the construction itself, as I understand it, was not really discussed with the tenants. Basically, you have architectural drawings that are predicated on the old system of basements, first floors, offices, mezzanines which are not really logical and are not really practical for the individual tenants. I do not think there was any consultation with the people to see why they would like to have office space for their own use which must be accessed from outside of their unit going in an exterior area. The construction costs are obviously increased by doing so.

You also have people bidding on an unknown, because if you go to a contractor, and I know we did it, he will tell you that you can build that type of building for much less than \$600,000. We are now hearing, after the board has decided not to go ahead with it, the rationale for the determination of the reserve bid. Perhaps if the reserve bid had been explained and people had had an opportunity to figure out ways of amortizing it in their own minds, there might have been a different response.

In terms of the lease itself, I am not going to go through all of the lease, but you have a series of items that really make it commercially illogical to enter into a document like that. I alluded to the financing and to the completion, the fact that you are in limbo for a year and a half, the fact that you would be financing your own business while you are waiting for something to be constructed. You have a situation where in terms of the alternatives, no one approached anybody from the perspective of perhaps giving them options in terms of short-term leases.

It was my understanding, and I have heard of the committee's dealings in the past, that the idea was to open up the terminal a little and let in a breath of fresh air and let some more people in to try to invigorate it. Here you have a situation where you have in effect really closed it off again by making it financially impossible for people to get in.

There might have been a structuring or a staging of the bid so that you would allow people to purchase. You might also have five-year leases, which I think was the overall intention or recommendation of this board, where you could lease units to people on a five-year basis. Maybe there are people who are nearing retirement who do not want to have a 25-year perpetual lease and not know that they are going to be able to assign it or even give it to their children.

You had eight people putting in bids. Someone who is willing to put up \$250,000 or \$300,000 under these adverse conditions may be willing to pay \$10,000 a month in rent. The terminal board could then retain, for its own purposes in the future, control over those units and still allow access for people to come in. If private financing were considered, I have no doubt private financing would be available, but on financially or commercially reasonable terms. A bank will lend the money. I know that some of the people who have put in bids, if you approached them on that basis, would arrange the financing themselves if they were allowed proper security and commercially reasonable terms.

The last alternative, which is probably the one we would least like to see happen but which should not be discarded at this time, is that if eight people expressed interest and three of the bids were, according to the deputation from the terminal board, reasonably close to the reserve bid, perhaps after you have dealt with the staging, the purchase lease, you may

want to invite in the other people who have other units in the terminal to see if they would like to pick up the slack.

I say this with the greatest of respect: I guess everybody was being cautious but the caution has precluded the commercial reasonableness of the whole process. No one should be surprised there were no bids, because you just cannot expect people to put up \$600,000 unless they are the desperate people you are aware of, who are going to lose their business as a result of this decision.

The one and a half hours that were spent in turning this down at the terminal board meeting really is not a solution. It is a copout. Our submission is that there are many ways of structuring this thing so it would work, even to the extent of setting up a committee, perhaps, of those people who put in the tenders and letting them come up with a proposal to the board that gets the board off the hook, gets the thing built and has everybody happy.

Mrs. Simon: I certainly concur with everything this gentleman has said. Those were all the reasons we found it impossible to submit a bid. We have been in the market, as I say, from a basement position, operating as a small business with a good many employees who support families.

We are a family business. We have been eagerly waiting for an upstairs position. We rent a B unit. There is always the threat that the people who are renting to us may need it, even though we invested a lot of money in refrigeration and operating—I do not know what you would call it—a big hold to allow for moving stuff from the basement to the main level. We did invest a lot of money in somebody else's property and at any time that person could tell us he needs the property. These are the conditions under which we have been operating.

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As far as I can remember, even before the present board—that is not to say all the members of the present board—there was a Mr. Assman. As far back as that, we were negotiating for a lease in the market that was to have been built at Highway 7 and Weston Road many years back. We were extremely disappointed when that was turned down because we were looking forward to having a place there. Of course, at that time the costs would have been quite nominal and the situation certainly would not have been as it is today. I cannot imagine why that proposal was scrapped at Highway 7 and Weston Road. In my opinion, that would have certainly satisfied everybody. It was a wonderful location, with lots of space. However, the board chose to turn it down.

Again, from that time to this, we have been on the list in the event the market should choose to expand. Through the years, we have been quoted many different prices of what it might cost—"It's going. It's not going. It's going. It's not going." Eventually, when we found it was going, we were thrilled and delighted.

Of course, we got the application for the tender and we took it to our lawyer. When he read through it and told us what it was—first and foremost, we could bid, let's say, \$800,000 and someone could bid \$200,000. It would be at the discretion of the board whether it accepted the \$200,000 along with the \$800,000. I know that is exaggerating, but we were not going to be paying the same price, which in my opinion is not fair to begin with.

We were told we had no rights. When the board says it tried to come up



with a lease that would be suitable to both parties, I do not know who the other party is that it is referring to, because we could not put ourselves in that position, to put up 10 per cent and then keep putting up money all the way along and then our lawyer says, "In the tender, it says you are not entitled to any of that money back except at the discretion of the board." We took the papers into the bank to see if we could get mortgaging for that and the bank said, "No way."

In view of the fact my husband is not as young as he was when he went into the market, and 24 years down the road he certainly is not going to be in the market, if we wanted to transfer the lease to our children or to—there would be nothing at the end of the road. So we, who have been waiting for almost 26 years for the market to come up with something for us, could not submit a tender. It was impossible for us to go that way.

Mr. Chairman: Do you have a sublease? Are you a sublessee or—

Mrs. Simon: We are subtenants, yes.

Mr. Chairman: In an A or a B?

Mrs. Simon: In a B.

Mr. Chairman: How many years have you been subleasing?

Mrs. Simon: This is my husband. He would have done this presentation, but he just had surgery on a vocal cord.

Mr. Chairman: He looks like I did about 24 years ago.

Mrs. Simon: He just had surgery on a vocal cord.

Mr. Chairman: Perhaps you could translate for us.

Mrs. Simon: How long have we been in the—

Mr. Simon: For seven years. We have been downstairs for 26 years.

Mr. Chairman: You will have to speak up.

Mrs. Simon: In the basement, under the storage, for 26 years.

Mr. Chairman: There is somebody then who has a major lease on that and you sublease it from him.

Mrs. Simon: Yes.

Mr. Chairman: What did you pay for your sublease at the time?

Mr. Simon: It was \$3,300 a month.

Mrs. Simon: We did not buy the lease. We just pay rent and we pay \$4,786 a month.

Mr. Simon: Downstairs.

Mrs. Simon: No, that is downstairs. I am sorry. It is \$3,200 monthly upstairs.

Mrs. Grier: Who do you pay to downstairs? Who owns the downstairs?

Mrs. Simon: We pay to the board. We are tenants in the downstairs position.

Mr. Simon: With a short-term lease.

Mr. Chairman: Okay. I have a list of names here: Marland and Nixon.

Mrs. Marland: Actually, you have just asked all the questions I wanted clarified. I gather you have been in the basement 26 years.

Mrs. Simon: Yes.

Mrs. Marland: For 26 years you have been on a waiting list to get more space other than in the basement.

Mrs. Simon: I do not know if it is exactly—how long?

Mr. Simon: We have bid many times and always had somebody outbid us for space in the market.

Mrs. Simon: Upstairs.

Mr. Simon: The waiting list basically did not start until about 12 years ago or so when they were going to build at Weston Road and then at the market itself.

Mrs. Marland: When you were outbid, were the bids published? Did you know what you lost by?

Mr. Chairman: We have a problem. To have this on the record with regard to Hansard, I believe, Mrs. Simon, you will have to repeat what he says.

Mrs. Simon: Okay.

Mr. Simon: Repeat your question, please.

Mrs. Marland: You said you have tried to get space other than in the basement and you have bid when other space has been available, but you have lost in the bidding process. Were the bids public and did you know what you lost by? Mrs. Simon, you gave an example that was very interesting a few minutes ago when you said you could offer \$800,000 now and lose to somebody who was only paying \$200,000.

Mrs. Simon: No, that is not what I said.

Mrs. Marland: Oh.

Mrs. Simon: I said we could both be granted the stalls.

Mrs. Marland: Yes.

Mrs. Simon: But with such a variation in costs.



Mrs. Marland: Oh, you could. Okay. Then what is the answer to this question: In the bids you have lost out on in the past, were those figures public and did you know what you lost to? The people who won against you, do you know what they are paying?

Mrs. Simon: First and foremost, I would like to make it clear that these were offers to people who owned leases in the A stalls. One bidder, she said it was a—

Mr. Simon: It was \$185,000.

Mrs. Simon: We submitted \$185,000 for one stall.

Mrs. Marland: Upstairs?

Mrs. Simon: Yes.

Mr. Simon: On the day of closing, they sold two stalls for \$450,000. So that amounts to that, but where we missed out on a bid was it was a—

Mrs. Marland: I think probably I will not pursue this aspect because we are short of time and I now get a clearer picture anyway. Is the situation that the people who have the space you would like are subletting their space to other bidders? For you to get upstairs, you have to go to somebody who has a long-term lease?

Mrs. Simon: Yes.

Mrs. Marland: Is it a fair assessment to say that the space you want to get is not within the control of the board of the terminal, that it is in the control of these people who have had this long-term space upstairs and they sublet to people who outbid you?

Mr. Simon: Totally.

Mrs. Marland: Is that what is happening?

Mrs. Simon: That is what has happened, yes.

Mrs. Marland: So what we need to do is have subletting within the control of the board, not with the people who own that space. In other words, to get rid of the control of the market, we have to—

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Mrs. Simon: I am sorry for interrupting. I really do not know procedure as to—if we submit an offer to the individual, I believe it requires board approval. I am not quite sure on that, so I cannot speak for that.

Mrs. Marland: We can find that out. I just cannot recall all the information we had when we dealt with this two years ago.

Mr. J. B. Nixon: I apologize to the committee and the people appearing. Apparently notice was given. I have been stuck in an elevator for 45 minutes, so I have not read everything.

Mr. Chairman: I know exactly what it feels like.

Mr. J. B. Nixon: I am sure the witnesses understand. My question is, are you saying that because of the way the tender was structured, it would be financially impossible for anyone to comply? By "impossible," I mean impossible for the reasonably prudent commercial person to comply. Or would it be possible for some to comply and not others?

Mr. Simon: It would be possible for those who have unlimited funds to buy regardless. We have been in the market a lot of years, but we are a working family and we could not meet the criteria of the leases as they are now written.

Mr. J. B. Nixon: It is my understanding that—no, I will not go into that. What would you propose? What would be your solution to this problem?

Mr. Simon: You would have to have some idea of what the rent is going to be, some idea of what the maintenance costs are going to be, which is not unreasonable, and also some idea of what type of bid to make. We were totally in the dark as to what other costs were going to be put on these units, like a farmers' deck, maintenance of the roads, all this here. We were not advised in any way, shape or form, nor does it state in the leases, as to what—maybe I could manage to buy the place, but I might not be able to afford to keep up the rent and maintenance because we have no idea whatsoever of the cost of upkeep of these units. That is one of the major points.

Mr. Chairman: What would be the ballpark figure to build a new unit?

Mr. Simon: In my opinion?

Mr. Chairman: Yes.

Mr. Simon: I do not know that the offices upstairs are necessary. I do not know how much is in that area. The last figure I had a while back, when they were going to make some extensions down the back, was about \$320,000. That was the last figure a few years ago. Now, from what I understand, \$600,000 or \$550,000 was rejected. Of those eight bids, I understand there were quite a few at \$3,000 or whatever, so that was a joke.

Then, the main thing, not to know what your upkeep, your rent and your maintenance is going to be would make it for people like us—we employ 22 people. We work hard for a family business. My father-in-law was there for 40 years before us. We just make a living. We cannot go into a venture with no known costs.

I am the major person who runs the business and if something happened to me, we could not even sell the place. We cannot bring in our children; we cannot sign it over; we cannot sublease. All these things are as if this thing were made to be rejected.

Mr. Chairman: How long is your lease for now?

Mr. Simon: I have one year to go in the B unit. We have the units downstairs that I consider C units, the basement units, with six and six; six years and a six-year option.



Mr. Chairman: If you want to renew that lease again, you may have competition to do that. Is that right?

Mr. Simon: In the basement?

Mr. Chairman: Either one.

Mr. Simon: I do not think so. I think the demolition clause is only if they intend to destroy that area.

Mr. Chairman: So you could have a lease there for ever.

Mr. Simon: No, we do not have a perpetual lease like they do upstairs. Upstairs it is perpetual. We have it totally different. We have a six and six, and then it is all up to the discretion of the board after that.

Mr. J. B. Nixon: What you are suggesting is that there is a demolition clause in the lease which permits demolition at any time—

Mr. Simon: After the first six years.

Mr. Chairman: But on the level upstairs that you have, you could have that for—

Mr. Simon: On that, we go on a yearly basis. They are now talking about trying to sell the unit. If they sell it to someone else, then we basically have no place upstairs.

Mr. Chairman: What would that unit be worth today if somebody wanted to buy it?

Mr. Simon: The last one that sold two years ago, that we had originally bought and they found they had to pay tax on, was sold for \$400,000.

Mr. Chairman: We have heard that there are some units that have been changing hands for over \$1 million.

Mr. Simon: Those are the A units in the main corridor. The B units are off the dock. They are at the side of the storage. You do not get the passing trade there.

Mr. J. B. Nixon: Just to go back, I asked you whether it would be possible for anyone who was still considered a reasonably prudent commercial person to comply with the terms of the tender, and you suggested someone of unlimited funds. I want you to be accurate. I realize that there is no one with really unlimited funds, but are there people in this marketplace in the province of Ontario who you think could comply or would be interested in complying with the terms of the tender?

Mr. Simon: I would have to think that from the 48 or 50 files that were picked up, only two really came close to meeting the criteria. That may answer your question.

Mr. J. B. Nixon: Okay. Thank you.

Miss Martel: I do not have a question, but I do want to ask the solicitor if he has anything to add. I noticed you were moving about a little bit and I am wondering if you want to clarify anything for us or add something.

Mr. Pazulla: I am itching to speak. The question was raised about unlimited funds. I think perhaps I did not make it clear enough. Anyone who had the full amount of his tender price available in cash, unconditionally, at this point in time, before being allowed to move in or do anything, and also was willing to put up that money on the understanding that he might not be able to sell the unit and that if he passed away, he might not be able to bequeath the unit, all of those conditions, could conceivably accept the tender.

I think I indicated that the people who are really desperate, have no alternative and have the money, are the ones who have put a tender in. Anybody else is really just gambling with his money, because he has no security for it.

Mr. J. B. Nixon: Okay. I am not trying to lead you at all. What I am trying to find out is, first, whether in this marketplace there are reasonably prudent commercial people—I choose those words carefully; you are a lawyer—who would see this as an opportunity that is financially worth pursuing. Second, if that is the case, without identifying that person or those people, do they fall into a particular category of type in terms of size or whatever?

Mr. Pazulla: I cannot answer your question specifically with respect to individuals because I have one client, but in conversations, and I guess this is sort of hearsay, if I can use that word, there are a number of people who want to get into the terminal.

Mr. J. B. Nixon: I understand that, but under those terms?

Mr. Pazulla: You say "those terms." If you are saying the terms of the tender that was put out, you have your answer. There are eight people who technically are willing to go in under the terms of the tender, and they have named the value that they attribute to those terms. If you ask, "Are there people willing to go into the market on commercially reasonable terms?" there are many people. You have a waiting list and you have the evidence.

I was handed a copy of the Ontario Food Terminal Board—on one unit you have three bids that the board was forced to turn down assignments. There is no price there, but I would be very surprised if it was under \$1 million. You have three people right there who are willing to tender over \$1 million for a unit that is some 500 feet away from this building but are not willing, because they are commercially reasonable people, to tender on a C unit under those terms.

They are really saying, "I will pay \$1 million if I have all my guarantees but I am not going to pay \$600,000 to buy a pig in a poke and not know what I am getting." That is where your reasonableness comes in. If the units were sold for \$200,000, you would have all your people because they would say, "That is the cost of the risk factor."

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Mr. Chairman: We are just about out of time. I will allow you a couple of questions.

Mrs. Grier: I just wanted to question Mr. Pazulla because I know the board feels that it designed a lease to overcome the objections that this committee and some of the sublessees had to the perpetuity of the existing A and B leases and to preclude reassignment of leases in the future at the enormous costs that are now asked for.



Is it, in your opinion as a lawyer, possible to design a lease that does not reinvent the kind of perpetuity provisions and the monopoly that we are trying to get away from, and at the same time is commercially attractive to people who want to get in and be new participants in the food terminal?

Mr. Pazulla: The irony of it is you have a two-class system at the terminal now. It is based on the testimony that you have heard this morning. When it comes to dealing with A and B units, there is a mechanism in place whereby they are rejecting bids where the people do not show financial responsibility or, I guess, the commercial ability to take over a lease. They are rejecting bids where there is a concentration of ownership. They have those mechanisms in place. There are always the legal ones about having a produce licence and things like that.

If you just took those terms that are being applied to everybody else now and you put them into the new leases, you would maintain the control that you are looking for in terms of the concentration of ownership and the financial responsibility and you would be offering them the same terms as are in the other leases.

The perpetuity clause is a function of the extensions of the leases, the terms of the lease, the 25 years. There is no perpetuity there. It ends in 25 years. If someone bids \$800,000 for a lease now, they are amortizing that cost over 25 years. In fact, the lease can actually be shortened. There is a provision about compliance with the Planning Act. It can go down to 21 years, which is another uncertainty that they have thrown in there.

Someone bidding on that unit is amortizing the cost over 25 years. Someone bidding on any of the other units at \$1 million, or whatever it is, is amortizing it over perpetuity. It is a different ball game all together. I think if someone sat down and wanted to incorporate the recommendations of the committee, you could easily put it into a lease but you would have to specify.

The moment you put in a clause that says, "Consent may be arbitrarily withheld," and you leave it at that, no one will commercially accept that. If you put in a clause that you cannot assign to somebody else who has ownership or is not financially responsible, you could stipulate all of those provisos that are basically based on your recommendations. You can tailor-make the lease to incorporate what you want and also to make it commercially reasonable.

The problem with it now is that it just says, "Whatever we decide, and we have the legal authority to be arbitrary in our decisions, that is what goes in the future." A bank will not touch it and most people who want to go into business will not touch it.

Mr. Chairman: That answers the question that I was going to ask, "Tell us how we can proceed with the C unit?" Thank you very much for appearing before us.

Mr. Pazulla: Thank you for the opportunity.

Mr. Chairman: We would like now to have the food terminal board members back.

I would like to remind the committee that we have a delegation here from the Northwest Territories: Henry Zoe, Don Morin, Brian Lewis and Doug Schauerete. Please stand up so we will recognize who you are. We will be having lunch with these people today. It is unfortunate that we have not had

time to show you what duties our researcher has. However, if the food terminal board is short and our questions are short, we may just have a few minutes at the end so that we can do a bit of that.

If the food terminal members would like to come up to the desk, while you are on your way up, perhaps I can phrase a question to you. It has to do with just exactly what we have heard. I would like to hear from you how you feel that we could proceed, if you can at all, with the C units. You can answer that if you wish to or you can go around it, but it is a question that I would like to see clarified if we are going to proceed.

Mr. Carsley: I could say this. I do not like to ask for funds, but a lot of this problem would go away if we in fact did have a government grant, as the committee first suggested, to help build these units. I understand that funds are tight, but there is no way—what Mr. Vetere's lawyer said there is right. You are not on a level playing field. Our own lawyer even says the new leases are not that marketable but, as I said, the pendulum has swung the other way and these leases have all these provisions in them which make them somewhat restrictive.

In order to compensate for that, I guess maybe we have to be able to offer these people something at a reduced cost. I know some people said that it seemed the units were going to cost a lot, but we have to take the advice of our architect. This was a quantity estimate that was done by an estimator here in the city who has a good reputation.

Sure, we could back out of the site development and all the rest of it and just give it to them—you know, try to fund the dock and some of the other things in another way—but you are still not going to get away from the fact that you just cannot build these damned things for nothing. In fact, I could go on record as saying that when Treasury looked at the estimates, it felt they were too low.

Mr. J. B. Nixon: I guess my question is based on not having heard much concern expressed about price here. You are saying it is really the government's fault because it is not giving you guys enough money—

Mr. Carsley: I did not say it was the government's fault; I said that would help alleviate the situation. I never said it was the government's fault.

Mr. J. B. Nixon: It is the implication I drew. But what I understand to be the problem presented by the previous witnesses is that the terms of the tender are restrictive. They are saying, "If we put up money, there is no guarantee we will get anything for it, and if we do not get anything for it, there is no guarantee that you'll give back the money."

Mr. Carsley: That is not entirely correct, Mr. Nixon. In fact, the agreement to lease did indicate that if the board was unable to get a building permit, and there were a number of other things in there as well, the board had until October 1989 to get all its ducks in a row, get the building permits, etc.

If by that time the board was not able to get a building permit—and the building permit, I think, was the key thing in the agreement to lease—then it would give the 10 per cent down payment back to the tenants with interest. We were never going to keep all the down payment if the thing did not get off the ground, and that is clearly spelled out in the agreement-to-lease document.



Mr. J. B. Nixon: You state to me that what I put to you was not entirely correct. Does that mean it is not entirely incorrect either?

Mr. Carsley: I have gone on record as saying the lease is not that marketable the way it is set up. I think Mr. Vetere's lawyer made that statement as well.

Mrs. Grier: I want to turn to the negotiations with the existing A and B leaseholders, if that is appropriate, and ask the board whether the position paper that was submitted to the board when it met with the A and B leaseholders could be circulated. Is that available and what did it contain?

Mr. Carsley: We have received their position and our chairman has said that at this point in time their position is only a first position and we still have to undergo negotiations with them. We have really had only one meeting where the board outlined to the tenants what the committee's recommendations were in terms of the lease and they have now given us a position paper.

I will be quite frank with you. Their position is quite firm but, on the other hand, we are given to believe that there could be some room for negotiation. That has not taken place yet.

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Mrs. Grier: They have retained a lawyer, I gather, to negotiate on their behalf.

Mr. Carsley: Yes, they have.

Mrs. Grier: In these meetings, if I can perhaps ask Mr. Melara to speak for Mr. Giles, are the A and B unit members who have an interest in the terminal and who are also board members—which hat do you wear in these negotiations?

Mr. Melara: I was sitting at the board end of it, not as a tenant.

Mrs. Grier: So who represents you as a tenant?

Mr. Melara: No one represented our firm at that time.

Mrs. Grier: I see. But is your firm part of the group that has hired Goodman and Goodman to represent you in your negotiations with the board?

Mr. Melara: All the tenants have retained Goodman and Goodman, so it is an equally split cost.

Mrs. Grier: As vice-chairman of the board, you are sharing in the cost of a lawyer who is going to be negotiating with the board about your lease?

Mr. Melara: Yes, that is right. For the entire terminal.

Mrs. Grier: And you do not see any problem about that?

Mr. Melara: Not really. I have a partner in my business and he certainly has to have an interest in there too.

Mrs. Grier: I see. Okay. Perhaps Mr. Carsley can tell me what is the next move. Are you waiting for another position paper from the tenants?

Mr. Carsley: Based on their position paper, we are now putting together a position paper, which we are presently in the process of writing, that will be presented to them and then we will have a meeting, I would think within the next two weeks. The tenants appear to be very anxious to have a meeting and certainly the board, I feel, will want to have a meeting.

I would suggest that the full board will probably not sit in on these negotiations, but I think it is our chairman's wish that he lead the negotiations on behalf of the board. Mr. Nicholas and I will be there and possibly another two directors, but I do not think Mr. Giles or Mr. Melara would be in on that. Although I am not entirely sure, I think that was the chairman's thinking on it.

Mrs. Grier: One of the recommendations of this committee had been that representatives of the ministry be part of the board or at least attend board meetings. I gather from your minutes that there was nobody from the ministry present at your first meeting with the A and B leaseholders. Have you any indication whether the ministry intends to play a role or be present in these negotiations?

Mr. Carsley: If they do intend to play a role, they have not indicated to us that they will. But they will play a role—let's put it that way. I do not know what their position is at this point.

Mr. Dietsch: I want to go back to the C units. From the discussion that was taking place between yourself and Mr. Nixon and from the presenter previous to you making the point, I understood that the terms of the agreement for bids were not as desirable as either party would like to have them. Is that a summation? Am I fairly close?

Mr. Carsley: Let's put it this way: If I were someone who was interested in a C unit lease, there are certain features of that lease, the way we constructed it, that makes it a lease that very much favours the landlord to a great degree.

Mr. Dietsch: In fairness to both parties, I think we want to have terms that are fair to both sides. As I understood the comment you made to Mr. Nixon, I would like to ask you why the board has not made recommendations or why you have not made recommendations to the board for agreeable terms.

Mr. Carsley: I could say that one of the things we have been through with the committee is the present leases—and of course you are very familiar with what is in the present A and B unit leases—and the idea was that some of the things that were, shall we say, of an offensive nature to people in the present A and B unit leases be excluded from the C unit leases.

One of the key, shall we say, elements in the new lease is the assignment clause. Right now, the assignment clause in the A and B unit leases—I have forgotten the exact wording—has the words that the board will not unreasonably withhold its permission.

We have been through this before, I know, but that means the board has very little control over whom those units are assigned to. In the new leases, to phrase it in a rather short form, because there are some other qualifying clauses, the board can arbitrarily withhold its consent. It is my understanding that if you wanted to assign your premises to somebody the board



did not like, the board could just say: "I'm sorry, leaseholder. We don't want this person as a tenant. Therefore, we can't accept this assignment."

Mr. Chairman: What if they took you to court?

Mr. Carsley: If they took us to court, it is our understanding they would lose.

Mr. Dietsch: In terms of trying to develop bids for participating in new C units, if there is some area in which tenants feel they are not taking part in the bid process because they feel disadvantaged—I understood you to say you felt disadvantaged by the process—I think the onus is on you to give recommendations so we have a more viable, fair process to go through. That is the way I feel about it.

Another thing is that there seems to be, if I detect correctly, a lot of discussion in terms of possible conflict on the part of some members of the board. I would suggest for the benefit of all those involved that anyone who finds himself in that position should seek some legal advice.

Mr. Nicholas: If I may add one point, you are talking about this question of fairness. I think everybody in the room realizes that lease is designed to meet the requirements of this committee, which I would assume is looking at the people of Ontario, making sure there is a fair lease. Now the people are saying fair, and nobody was specific, but what is fair? One to have perpetuity and one not to have, and therefore do you change it? Or do you stick by your guns and follow the recommendations and say that is what we deem to be fair?

You can carry it through the various clauses, but the board is in a bit of a position. How much further can they go? They are following the recommendations. They are doing what they feel is right, correct and proper in this day and age.

Living with a lease that was written 30 years ago keeps coming back to haunt us. We are going at this stage on what is fair. I suggest people look at the response in light of what comparisons are made. You can compare the physical structure. You can compare the financing. You can compare the terms of the lease. Out of those three is the answer as to the response.

Mr. Dietsch: I appreciate what you are saying, but at the same time I do not agree with you in that we are responding to this board, this agency, this group here in this room, that that was what you were trying to do. If this group happens to be wrong in some areas, I think suggestions should be made in that respect.

One further point: If I take into consideration all the other recommendations, you did not comply with all the other recommendations and you gave reasons.

Mr. Nicholas: I think it is also fair, if I may add, that the board made some of those decisions before we met initially with this committee when we responded to the minister's requests. A lot of those decisions were made prior to our appearing before this committee. When I am saying what is fair, the board felt that was fair—not just because this committee said so; the board felt it was fair.

There could be room for what is in the lease in terminology, the detail

of the tendering of what is included, but we feel the lease terms are the fairest way to approach it.

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Mr. Dietsch: Not to belabour it because there could be other points and you want to move on, but in reference to that, if there are some areas you think should be modified to address the questions that have been raised here today and that have been addressed by previous presenters, perhaps that should be reviewed with options for further recommendations, and some of them have been made today.

Mr. Chairman: We have about five minutes left. Mrs. Marland.

Mrs. Marland: If the problem for the owners of the terminal, namely, those of us who sit in this room, is that we have the perpetuity in the leases, as you said, which keeps coming back to haunt us—you are saying that is really the basis of the problem. Is that not what we discussed last year?

Mr. Nicholas: Historically it has been a problem, since Vaughan township.

Mrs. Marland: If it has been a problem historically, to use your words, and the lease is with—does the lease say the Ontario Food Terminal? Is that the actual name of the landlord?

Mr. Carsley: The Ontario Food Terminal Board.

Mrs. Marland: Is there not a way to put an end to all of this agony by changing the ownership of the property? Is there anything in the existing leases that obligates new owners to continue the leases?

Mr. Carsley: I would suggest yes. Again, I would have to defer to our lawyers, but the mere fact that there is nothing mentioned in the lease covering that would seem to me to mean that if the government were to change the ownership or put it under supplies and services or something like that, and then determine that the lease was going to be broken because of that, then we get into this whole business of compensation, which was brought up the last time we were here.

Mrs. Marland: Has the ownership aspect been pursued as a way of starting clean again?

Mr. Carsley: I do not think so; not by the board. Someone in the ministry may have discussed it but not at the board.

Mrs. Marland: If the historical lease and the perpetuity is such a problem, and I think there are areas that really are indefensible for all of us and I am sure for the board as well, and if it has, as has been said this morning, been going on down through history because of the wording of the leases, why would the board not want to go ahead and explore any possible option to changing and remedying the whole mess? If the remedy is something that can be achieved through changing the ownership of the operation, would the board be willing to do that and why has it not done it?

Mr. Carsley: I can only speak for what has transpired at meetings since I have been the general manager. That has been reviewed a number of times with the board's lawyers, as to how the perpetual lease could be



changed. The board has looked at this before but never specifically, I do not think, at your suggestion of a change in ownership as a way of doing it.

Mrs. Marland: How can we, other than putting it as a final recommendation of our report that the board explore that option—in a way it seems a shame to lose the time in which we could get an answer before we compile our final report. I wonder if there could be direction given to the board to furnish the clerk with that information, that it could pursue a way of finding a solution through changing the ownership of the land and the total operation.

Mr. Chairman: We were all through this with the food terminal board when we first talked to them last April.

Mrs. Marland: The general manager just said he is not sure that what I have suggested has actually been pursued.

Mrs. Grier: Is that something for the board to pursue or for the ministry to pursue? It would seem to me the implications are a change in legislation and restructuring of the board and the whole implications of compensation around that.

Mrs. Marland: The board is responsible for the leases at the moment. It is only the leases that are the problem, so if that could be a solution for the leases, I would like to know whether it is worth becoming a recommendation in our report. If it is not a possibility—

Mr. Chairman: One of our recommendations is that they pursue the feasibility with the Ministry of Agriculture and Food to try to get out of the leases they have.

Mrs. Grier: By any way possible.

Mrs. Marland: I know, but I would like to know the answer to that one route, because maybe we want to be as specific as suggesting that we change the ownership.

Mr. Chairman: Are there no further questions for the board?

Mrs. Marland: Can I get an answer to that before we discuss this again?

Mr. Chairman: Do you have an answer for that?

Mrs. Marland: No, he does not have an answer today. I just asked him.

Mrs. Grier: Perhaps the researcher could contact counsel and get some of the opinions on how that could happen, because I am not sure it is something the board could do; I think it is something the government has to do.

Mrs. Marland: Okay. That would be great to get the answer. Thank you.

Mr. Chairman: Thank you very much for spending the time to come to us again today and take part in this process. We hope to make some recommendations. We appreciate it very much. To the other people who came out, we also want to thank you for bringing to our attention some of the concerns you have.

Mr. Chairman: I believe it has already been reported that Henry Zoe is the chairman of the standing committee on government agencies from the Northwest Territories. Don Morin, who I have already mentioned, is the vice-chairman. Brian Lewis is an MLA. We have Doug Schauerete who is the staff person with the committee. Welcome.

The committee will adjourn until further notice. I will be absent next week; I will not be here.

Mr. Dietsch: Oh.

Mr. Chairman: I hate to disappoint you. Does the committee want to continue to have input with the researcher with regard to the French-language commission or do you want to wait until the following week?

Interjection.

Mr. Chairman: You want to wait until the following week. We will meet again on February 8.

Mr. Dietsch: We cannot do without you.

Mr. Chairman: I know. I know. I know.

The committee adjourned at 12 noon.



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STANDING COMMITTEE ON GOVERNMENT AGENCIES  
ORGANIZATION

WEDNESDAY, FEBRUARY 15, 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Martel, Shelley (Sudbury East NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitution:

Dietsch, Michael M. (St. Catharines-Brock L) for Mr. Ballinger

Also taking part:

McCague, George R. (Simcoe West PC)

Clerk: Deller, Deborah

Staff:

McLellan, Ray, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Waste Management Corp.:

Austin, Susan, Executive Assistant to President

Schmidt, Edgar H., Project Manager, Facility Development

Garr, Mary Lou, Communications Officer, Smithville



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, February 15, 1989

The committee met at 10:14 a.m. in room 228.

ORGANIZATION

Mr. Chairman: I call the meeting to order. We have with us some people from the Ministry of the Environment to show us some slides. They have done a lot of work with regard to the proposed itinerary for the trip, which I believe at the present time will be cancelled due to the fact of the extra sitting days that are going to take place in the Legislature.

However, we had made these arrangements and it would be interesting for the committee to see the slides that are here today, so I turn it over to the representatives from the Ministry of the Environment.

Ms. Austin: Thank you. Good morning. My name is Susan Austin. I am from Ontario Waste Management Corp. On my left is Mary Lou Garr, a communications officer from our regional office in Smithville, and Edgar Schmidt, our project manager, engineering. Edgar is going to take us through a few slides of the various facilities in Germany and Mary Lou wanted to come to discuss her travel to Europe last summer, when she met with farmers and members of the local community surrounding various waste treatment facilities.

If you do not mind, I am just going to put our proposed itinerary up on the overhead. As discussed many times with Deborah Deller and Ray McLellan, this is our understanding of what the committee's requirements are. While visiting Germany we had three days to work with. The anticipated arrival by the full committee is on Sunday, February 26, in Munich. We have made hotel reservations for you in downtown Munich, and Edgar has offered to meet with members of the committee Sunday evening for a briefing session if required or if desirable.

On Monday we would move on to the head office of GSB—Gesellschaft zur Beseitigung von Sondermüll in Bayern—to meet with members of the Bavarian Ministry of the Environment and the managing director of the facility. We leave about 11 a.m. by bus, which we will have chartered for the duration of your trip, and carry on to Schwabach, stopping for lunch on the way.

From there we thought—it is a little detour, is it, Edgar, about an hour, to Ebenhausen?

Mr. Schmidt: Yes.

Ms. Austin: —for a meeting and a dinner with local elected officials and some community representatives as well. Accommodation that night is at Ingolstadt at the Ambassador Hotel and we have made those arrangements for you.

The following day we had planned to go to the Ebenhausen plant to visit with plant personnel and again government officials—I think I am correct. . Anyone wishing to stay behind may do so and the bus can return to Ingolstadt to pick up the remaining members to take them to Biebesheim that day.

Accommodation that night is in Biebesheim and also in Gernsheim. We have had to divide the committee, for reasons of accommodation. Dinner at the Biebesheimer Hotel with the mayor and other elected and community officials has been arranged, but I understand the committee may wish to have a free evening to go out and explore at will and that can be easily cancelled.

The following day, the final day, we visit the HIM, Hessische Industriemüll, facility at Biebesheim. There is a luncheon that has been arranged in a neighbouring town, about 12 kilometres away. From there, we travel to Frankfurt by bus, for about an hour, and I understand you have a plane that departs for Brussels at about 9:30.

That, as I say, is what we understand to be your needs, and we can alter the itinerary in whatever way is necessary.

Mr. Chairman: Thank you. Do you want to proceed with the slides now?

Mr. Schmidt: Thank you. Hold questions until after, right?

Mr. Chairman: Yes.

Mr. Schmidt: Okay. Some of you have seen the slides before. We made no changes to the number of slides because we thought you wanted just a brief presentation of what can be seen, what is available and where we are going.

I wanted to point out some of the places. You can see that we have here a map of Germany, of facilities that we have visited in the past seven years at different times, and these are all hazardous waste management facilities, treatment facilities, some integrated and some dispersed. We have debated for some time how we will best propose a facility. Specifically, the Bavarian facilities that we have contemplated seeing are shown on this map as GSB.

Ebenhausen is shown here and also the landfill facility in Munich is shown here, but we have not shown the facility at Schwabach that we had discussed the last time, because we had not visited the Schwabach facility before. Some of us have, but we have not put it on the map.

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The other facility in Hessen is the estate just to the north of Bavaria, and there again we have plans to visit it. We have been to Hessen a number of times and have also taken advantage of the improvements that they have done to their hazardous waste treatment facility and the things they have learned that we will be benefit from. If you do go there, you will get an idea of what has been done and some of the benefits to our facility design that we can get by having taken advantage of their improvements.

This shows a smattering of facilities in Europe that we have visited, from Finland at the top right to Sweden, Denmark, Great Britain, France, Italy and so on. This in particular is the facility that GSB is operating in Ebenhausen. That is one of the first facilities in Germany—it goes back in the early 1970s—to attempt to solve the problem of hazardous waste. That is an integrated facility with incineration for organic waste and physical chemical treatment for inorganic waste and a disposal for the residues of those treatments.

This is the incineration plant only. The stack is on the left-hand side and the waste starts up on the right-hand side and in the middle you have the



cleaning of the gases. That structure you see towards the right is the waste heat boiler to generate steam, and in that particular case electricity as well.

Let us discuss the view for those who have not seen a rotary kiln. This is what one looks like and they all look about the same: the kiln itself. That is what a flue gas treatment system looks like, of the type that is installed in Ebenhausen by GSB. Note the scrubber, which will scrub the acid gases and also the particulates by this electrostatic precipitator that is to the right. You just see the end of it.

That is the physical chemical treatment plant for organic waste in Ebenhausen by GSB, again from the early 1970s, and that is where the inorganic waste is being detoxified. The residue from that waste is then taken to the landfill, which is specially designed to take care of the hazardous waste residue, which is no longer hazardous by the time it leaves there.

That is a view of just inside the physical chemical treatment where you see storage tanks and you see a number of storage tanks to separate the different types of waste: acidic, alkaline, etc.

Here you see a part of a physical chemical treatment itself. That black tube in the back, for instance, scrubs the fumes that come out from the treatment process so that the air is being cleaned before it is released in the atmosphere.

That is how a physical chemical treatment facility looks inside. This is only a portion of the plant in Ebenhausen that had been built, as I said, in the early 1970s and is still very much operating. In your literature you are given some of the quantities of waste that are being treated at these facilities, and we have updated this on the very last page to 1987 and 1988 where it is available, so that you can appreciate some of the quantities that are being treated these days.

This particular aerial photograph is of the HIM facility in Biebesheim. That facility was built in 1980-81. It started up in late 1981 and began operation in early 1982. The facility has now been operating at capacity and is just about to increase the capacity by installing another rotary kiln system. To your left, where you see the green pasture, there will be another plant in the near future. That is surrounded by farm land, as you can see. That is about two kilometres from the town of Biebesheim.

That is what that looks like as a quick picture during construction, for instance. Again, the waste starts on the left and then proceeds to the right with the energy recovery boiler in the middle.

This is what the flue gas cleaning system look like. You may look at 20 incineration facilities in North America or in Europe and each one will have a different flue gas cleaning system. No two are the same, and that is the difficult part in convincing people sometimes that we do indeed have the best.

Just for those who are more technically oriented, this is a quick schematic of what the incineration facility looks like, how the waste starts from the left and goes to the right, and the residues are collected. The gases go out the stack and the flue gas cleaning is on the right-hand side with all the things incorporated that you see there.

That is what the Biebesheim facility looks like from a ground level shot. You see the farming operation that Mary Lou will touch on in more detail just after that.

That is a physical-chemical treatment plant in Frankfurt. It is also operated by HIM and has been there since the early 1970s as well. They are just in the process of doubling the capacity in this particular plant by adding to the building and adding to other things. In this case, it is very close to residential areas in the Frankfurt suburb where this is located.

Again, that is what it looks like inside for storage of these different types of wastes.

This is what it looks like where the waste is being detoxified in these reactor tanks that are at the bottom.

Here is some comparison of the facilities at GSB and HIM, compared to what we are proposing to do here for West Lincoln. We have not added the Schwabach facility to the slide, but it also has one rotary kiln of 30,000-tonne capacity, so it would be the same as what the Ontario Waste Management Corp. has shown there for Schwabach.

Some of the differences we have seen: Again, the scrubbers are different, the stack heights are different and the way the scrubber system works is different under the column of liquid effluent. We are proposing to have no liquid effluent to discharge, but some facilities do and some facilities do not. It depends on what you have available to discharge into.

That is a quick comparison of some of the facilities but you will see them all being different. I just have three or four slides to show you on other facilities.

That facility is operated by Bayer, the big chemical firm in Germany. It is hazardous waste incineration, just for their own facility.

This is a facility in Denmark, again started in the very early 1970s. They now have three rotary kilns operating, where they started with one in the 1970s. One was commissioned just recently.

Here is a facility under construction in Alberta, Chem-Security in Swan Hills. That is the incineration building during construction. That is why it does not look as clean as you see it there.

Mr. Miller: Where in Alberta?

Mr. Schmidt: It is in Swan Hills, about 240 kilometres north of Edmonton. That is how the facility looks now after the construction is finished.

Here is a facility operated by BASF. It is a rotary kiln of 30,000 tonnes, the same as we are proposing for hazardous waste. That is their kiln 6; they have five others. They incinerate only their own waste. They employ 55,000 people in the chemical complex on that particular site, so they have a lot of hazardous waste that they generate and incinerate.

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Mr. Chairman: The number is 55,000?

Mr. Schmidt: Yes.

Mr. Velshi: Not just on the waste plant.



Mr. Schmidt: No, I am sorry. The whole complex employs 55,000 people in one location. That is why they have six rotary kilns, because they make a lot of nonhazardous and hazardous waste. They incinerate a lot.

Mrs. Grier: What volume do they burn?

Mr. Schmidt: That kiln was designed for 30,000 tonnes a year and then they have the other kilns. I am showing that particular kiln because that is the most recent one they installed. They will be installing number seven very shortly, but this is specially designed to take care of toxic chemicals and toxic wastes in their flue gas cleaning system. The other kilns just have electrostatic precipitators to scrub the particulate matter. This is to do with chemical waste and acid gases.

You saw the Biebesheim facility in an aerial shot, and here is what we are proposing for the Niagara Peninsula and West Lincoln. As you can see, our incineration portion is just a small part of the plan because we have an integrated facility with the engineered landfill surrounding the operating area. That is all I wanted to show, rather than bore you with more. That is about enough to get a smattering of what is around.

Mr. Chairman: Thank you very much. There may be the odd question that some of the committee may have.

Mr. Breaugh: None of these appear to be huge complexes by themselves. They have a fairly large capacity, but they do not appear to be large industrial complexes. Are they?

Mr. Schmidt: No.

Mr. Breaugh: They look rather small, as a matter of fact.

Mr. Schmidt: Yes, it is because the facility you just saw in the aerial photograph is only the incineration part. Then they have two physical-chemical treatment plants separate from that location. There is one in Frankfurt and one further north in Kassel. What you have seen here is about 20 to 25 acres.

Mr. Breaugh: Could you compare that to the size of the proposal for West Lincoln?

Mr. Schmidt: Our operating facility is about 40 to 45 acres because we have more storage capacity and there are certain codes that we have to adhere to for separation of hazardous chemicals. Also, our facility is designed for doubling the capacity in later years. That is why you have more land area than you will see in the other facilities.

Regarding the other facilities, at the HIM facility, for instance, there was an old oil-burning facility existing at one time which was then taken over by HIM, so they had this land defined and then they built within the confines of the land. Only now do they expand outside the original area.

Mr. Breaugh: I am just thinking about how these things get received by those who live around them. In large measure, whenever you propose something that is physically impressive on a community, its concerns about it rise almost proportionate to the size of the facility. In the cases of the ones that you have shown us today there is an impression—perhaps wrongly, because I have just seen them on slides—that they are rather small,

unobtrusive and not-too-obnoxious kinds of things, but they have a lot of them. We are proposing to go the other way around, where we will have one fairly large one.

Mr. Schmidt: Yes, the GSB facility has an integrated facility in one area as well, but again it is confined within a certain area. If they would start from scratch they would also spread it out more if they had a choice; but that was in the early 1970s, when they did not have a choice. You have to remember their landfill is not included in the integrated facility as we have done here in our proposal.

Mr. Breaugh: Their facilities are somewhat smaller, but it really was not by design, it was more by accident than anything else. That is the land they owned and so they built accordingly.

Mr. Schmidt: Yes. That is right.

Mr. Chairman: Okay. I have Mr. Callahan, then perhaps we should hear from Mrs. Garr and she may answer some of our questions.

Mr. Callahan: You indicated that the one in Germany and I think the one in Alberta are fairly close to residential areas. Do you get the waste material there by trucks?

Mr. Schmidt: Yes. For the one in Germany, most of it goes there by truck. The HIM facility has rail facilities as well, but trucking is the most common. Alberta, of course, is all trucks. The Danish facility, for instance, is all rail, or 90 per cent is rail because the rail system is geared to this.

Mr. Callahan: What about the one for West Lincoln, is that basically trucks?

Mr. Schmidt: It is all trucks.

Mr. Callahan: It seems to me the biggest objection a lot of people have, other than the concern about the plant itself, is the traffic it generates.

Mr. Miller: Can I ask one further question? Where are your waste disposal sites in connection with those? You did not show us any pictures of the landfill sites.

Mr. Schmidt: I will show you this quickly. I will give you an example. Ebenhausen is here. Munich is here. The landfill site is here. It is the same in Biebesheim. They have a facility here but in the state of Hessen they have no landfill site available, except in very small areas. Residues have to be shipped outside the state. They are presently siting a landfill facility to take care of their waste. Some of the residues go to the salt mine depository, which is right on the East German border, right here.

Mr. Miller: In the proposed trip we are supposed to take—could you leave the map on a minute—are we going to the yellow area, basically?

Mr. Schmidt: We understand the committee wanted, within the time available, to see Ebenhausen, Schwabach, which is about here, and Biebesheim, within the time available, but we have not planned to visit a landfill facility because of the time constraints.



Mr. Miller: Are there just two areas, one in the north and one in the south, to take care of Germany's waste?

Mr. Schmidt: No, there are others. There are some in Hamburg and there are some in the rural areas. Some of the other chemical firms, as I mentioned, BASF, the big chemical firm Bayer and the big chemical firm Höchst, have their own hazardous waste incinerators, for instance, and physical-chemical treatment plants.

Mr. Miller: How big is Germany in relation to Ontario?

Mr. Schmidt: The state of Hessen is about the same as Ontario. Germany has 60 million people.

Mr. Miller: I mean land mass.

Mr. Schmidt: That is a good question. Northern Ontario would be close.

Mr. Miller: I guess Ontario Waste Management Corp. is zeroing in on one area and I think it has service scattered around.

Mrs. Grier: They have been doing it a lot longer and they are a lot more advanced than we are.

Mr. Schmidt: You have to remember that some states are more advanced than others. Bavaria and Hessen appear to us to be the most advanced in that area. Others are following suit now because of the new federal regulations and incentives that the federal government has put into place.

Mr. Chairman: Mary Lou, would you like to start?

Mrs. Garr: I probably should first explain what my job is with the Ontario Waste Management Corp. I am a communications officer in the regional office in Smithville, which is in the township of West Lincoln and is the closest village to the actual site where we plan to site the facility.

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My job in West Lincoln is to deal primarily with the community around that facility. I have lived there all my life, I was born and raised there, my husband farms there, so I have an understanding of the community and I hear the community's concerns. What I wanted to do, and what the Ontario Waste Management Corp. allowed me to do, was to go to Germany last summer and spend three days talking to the people who now cope with the facility in Germany. I wanted to ask them the things that the community is asking me.

I spent three days wandering around, knocking on doors. I had one big advantage that you, as a committee will not have, and that is I was by myself with an interpreter, so it was not poorly thought of when I walked up to someone's door, knocked on it and said, "Would you mind talking to me?" My interpreter became a little tired of explaining who I was and why I was there and why they should let me in. I was welcomed. I was really pleased with the response I had from people.

The pictures that I will show—and I will just go through them quickly because I do not know of how much interest they will be to you—are the types of slides that I took to bring back to the West Lincoln community. Although it

would be better for the West Lincoln people to talk first hand to these people in Germany, that was impossible, so I brought them slides. I will tell you some of the things that I heard from the people in Germany.

This is the physical-chemical treatment facility near Frankfurt. It is near a residential section. I did not have an opportunity to talk to the people here. We just had a very short visit, but I had some comments from other people in Biebesheim about it. The trucks are stopped at the gate. No truck is allowed inside the facility unless it is checked that it has come from where it was supposed to have come. People found it reassuring that the facility knew what trucks were coming.

He checks in with the lady near the lab. They bring a sample of what is on the truck to the lab and it is tested right there in the lab so that they know exactly what is on the truck. Then they are unloaded. The liquid tankers are unloaded directly into tanks. I think Edgar had this picture in his slides. This is the filter press inside. No organics are treated here at all. The organics are shipped to the rotary kiln incinerator at Biebesheim.

This is where I spent most of my time in Biebesheim. This is a truck entering the facility at Biebesheim.

As a farmer, I was interested in seeing the crops. If you go, you will not have that benefit because of the time of the year. In August, they had taken off a lot of the crops, but the sunflowers, sugarbeets and other things were still there. They farm right up to the edge of the facility.

This is the material being dropped into the rotary kiln. Most people in the community who had visited the facility found this rather objectionable. Many of them had visited the facility. The facility has open days. I believe it is every Thursday that anyone can come in and tour the facility. It was surprising to me how many of the people in town who claimed they opposed the facility had never been there, but this is rather a messy process.

Mrs. Grier: Is that indoors, dropping into the kiln? Is it inside?

Mrs. Garr: It is inside, but it is taken out of open bunkers. It just kind of reaches in and grabs a wad and drops it in.

The other thing I heard from people is that they do not like this piping. It was interesting. I talked to a group of students who said that, to them, these pipes represent danger. They also commented on the appearance of the facility. They thought the facility should be bright and cheerful. If it was dark, they objected to it because they had this sense of danger. These were high school students.

I found the facility quite large. I was interested in your comment, because this is my poor little interpreter, the girl who traipsed through barns and fields and everything else with me. This, to me, seemed very large, and people commented on that. They considered that facility to be quite large—it is really overpowering to stand beside those buildings—and it is grey, you will notice.

Mr. Dietsch: You say you found it quite large. Size-wise, how is that going to compare to what is proposed for West Lincoln? Bigger, smaller?

Mr. Schmidt: Our facility is designed to be the same size as Biebesheim, but you have to remember that at Biebesheim they have two rotary



kiln lines. We are proposing to start with only one. The overpowering thing you see there is the waste heat boiler, which is a huge thing. It takes a year to build. Then the flue gas cleaning system is overpowering. Some of the things you see there are in order not to have a liquid effluent discharge. You have to dry it. That is a big structure, but compared to a big chemical plant, it is small. It is big for a hazardous waste facility.

Mr. Dietsch: More specifically, is what is proposed for West Lincoln going to be comparable in size?

Mr. Schmidt: Yes.

Mr. Dietsch: Is that bigger or is it the same size?

Mr. Schmidt: No. It is comparable size, but only for half the capacity. What we see on two lines, West Lincoln has one. West Lincoln has an integrated facility with a physical-chemical treatment for inorganic waste of the same size, which Biebesheim does not have.

Mrs. Garr: With respect to the stack, which most people did not refer to, I was the one who brought up the stack all the time. I kept referring to it when I talked to the farmers, asking them, "Are you afraid of fallout from the stack? Have you had any problems? Have you had any problems marketing your crops?" They had not and they did not seem to fear that stack, which I found a little bit surprising, because that is the concern that we hear from the community in West Lincoln over and over again, their fear.

One thing I observed is that I think farming in Germany is a little more respected than farming in Ontario. There is a better integration of the farming community with the village. This is the village of Biebesheim. As a farmer, I was really surprised to see these tractors driving down the middle of the street and to see farms and animals and farm homes right in the village. I think when you are there, you will be fascinated at that. I could not help but feel how in Ontario we like to separate farming and never the twain shall meet, whereas with this integration that there is in Germany with the village, the industry and the farming, maybe it is more acceptable to place an industrial facility on farm land. That may be one reason people have fewer problems with it over there.

This is another tractor and a farmer in the background with rubber boots. Talking about the size of the facility, this is the 400-metre boundary. Our facility will be 400 metres from the road. If we are talking comparable size, then this is about what people will see when they drive along Highway 20 in West Lincoln. The time when I felt really overpowered was when I stood right beside the buildings.

More crops. I took a lot of pictures of crops which I have been using in the community. This was grain that had been taken off. I thought the crops looked very good. You can see that they do farm right up to the boundaries of the facility.

Mr. Miller: They could not have had a drought last year.

Mrs. Garr: No. Maybe that is why I liked it. Their crops looked a little better than ours did at home.

Mrs. Grier: What testing have they done of crops taken off directly surrounding the facility or within range of these facilities?

Mrs. Garr: They have done a fair amount of crop testing. When you are there and you talk to the mayor, he can provide you with some of that. The farmers felt quite reassured by the testing that was done. We had heard about a baby food company that had purchased vegetables from that area because of the extensive testing done, and one farmer confirmed that had occurred. It is a company called Alete and it had purchased carrots. It is not something that happens on a yearly basis, but it has occurred.

I also think the people in Germany perhaps respect authority a little bit more than some of the people I encountered. By that I mean—let me explain—

Mr. Dietsch: Do you want to repeat that?

1050

Mrs. Garr: When they were told by someone who had done monitoring that the results were good and there was no problem, the people accepted that.

Mr. Schmidt: Just to follow up on that testing, they also did testing on the crops before the facility was built, especially for cadmium, lead and chromium. Then they followed up the testing again and this was done by a university that specializes in plants and soils. These reports are available. We have them.

Mr. Chairman: If you would not mind completing your presentation, then we will have lots of questions.

Mrs. Garr: Okay. I will quickly go through it. This was taken from the yard of a farmer. You can see the stack in the background. He is the closest farmer to the facility. He is a hog farmer. These are his buildings. That is the farmer, who became very formal the minute I took his picture. These are his hogs. When he found out we also had hogs at home, he was quite willing to allow me into his barn. I was interested in the fact that he grows all his crops there, grinds his own feed and feeds what he grows.

Miss Roberts: Did you eat any of the pork?

Mrs. Garr: No, I did not.

Miss Roberts: I just thought I would ask.

Mrs. Garr: I had no cooking facilities.

Miss Roberts: Pigs that are fed on different things have a different taste, very easily. That is one thing you can tell very quickly.

Mrs. Garr: As a pork producer, I was not aware of that.

I also spent an extensive period of time with a vegetable farmer. You can see the stack in the background here as well. He owns 70 acres and is considered an extremely large farmer. Here are some more of his crops. He grows asparagus, cabbage, cauliflower. This is Herr Kunz. This is his farm. He was harvesting onions at the time. The farmers in West Lincoln find these pictures quite interesting because they want to see what those crops are like. These are more crop pictures. I thought the area looked quite lush.

Mr. Chairman: I have two questions for you. The first one is with



regard to what comes out of those stacks. What tests have been done on what does come out of the stack? The other question I have is with regard to your visit there. Did you visit any recycling or other landfill sites while you were there?

Mrs. Garr: No, I did not visit any landfill sites in Germany. I believe OWMC has the testing results. Mr. Schmidt actually is the person to ask about that. We have a lot of the results of testing that has been done there. My concern was more as a layman talking to people and saying: "How do you cope with it? Is it easy to live here?"

Mr. Chairman: The farmers were not concerned about what was coming out of the stacks?

Mrs. Garr: No, they were not. The basic question was: "Have you had any problems with your crops? Have you had any problems marketing these things?" I happened to talk to a gentleman from Frankfurt who drives out to that area to buy his vegetables. He was along the road and we stopped and approached him. He told us that is why he was there. He apparently makes a habit of coming out to that area and we were in the shadow of the stack right then as we talked.

The people were concerned about emergency procedures, things like that. I talked to them at length about that. There had been a fire at the Biebesheim facility a couple of years before that and people pointed out that the community had not known how to react or what to do when the sirens went off. A lot of what I heard from the community I brought back to OWMC and I said we should look at these things.

Mr. Callahan: Just very quickly, I noticed that—I think I am right—the stack proposed for West Lincoln is much higher than the one at this plant. Is that right?

Mr. Schmidt: No, the West Lincoln stack is proposed to be about 60 metres. What you saw there is close to 80 metres.

Mr. Callahan: I thought it was the reverse. Okay. It certainly makes it look a little better aesthetically, but does it make any difference, does it have any effect in terms of the degree to which the results you get there—

Mr. Schmidt: No. We have done a dispersion analysis using a modelling using 40-, 60-, 80-, even 100-metre stacks, and calculated the fallout, so to speak, at the maximum point of impingement at ground level. We have decided a 60-metre stack will give us the best—there is dispersion involved. Also, your ground-level impingement of the few contaminants that come out is very low. If we look at Ontario regulations on air emissions, we were within one per cent of the allowable in most cases and within three per cent in all cases. We have felt very confident that we do not need to go higher than 60 metres, for that reason. Now, of course, with the new initiative on the Clean Air Act, we do not get any figures. We are looking at putting in the best available technology at that time and we have already done some changes to this to even lower the emissions we can now do.

Mr. Breaugh: I did not hear you talk at all about any kind of physical evidence that a plant such as this exhibits. I think part of our problem is that all of us have either been to a place like Espanola or know somebody who has been there. The place stinks and it stinks all the time and the stink blows for 50 or 60 miles. It almost seems like this is a nice, clean little thing here. Is there any evidence of that in the community?

Mr. Schmidt: Not in the community. You are handling organic materials. I come from the petrochemical industry as an engineer. Handling organic materials, you do get some smells. But if the smells are properly contained, as they are with scrubbing and also contained vessels, storage tanks properly designed and maintained, then the smell does not go out. It does not spread.

It does not mean you will never get a smell. Sometimes you can have an accidental discharge of some vapours that smell, but there has never been a complaint, so to speak, that people noticed the smell. As Mrs. Garr said, they had other concerns about emergency response and so on, but not from an odour point of view.

I know what you are talking about is likely the municipal garbage incinerators. I have been to some of them as well and they do have a smell; there is no question. It is a different type of smell that is more likeable.

Mr. Breaugh: If you were born on a farm, you understand what a farm is like. You become accustomed to that and it does not bother you. But if you live in Espanola, that is not a nice, clean stink. That is a terrible stink and it is there all the time. In the summer you can almost see it.

If you have ever been to Wawa and seen the plume through the woods, there is a cut-line just as if a road was built through the forest, where the stuff that comes out of the stack kills all the vegetation, just as if you had paved a road through the forest. Are there any kinds of visible signs of that? They were farming right up to it, but they seemed to be fairly good in that the emission from the stack was not causing that kind of problem.

Mrs. Garr: I was interested in whether people were complaining about the smell, the noise and the light. Those were three things I asked the people and there were no complaints about any of them. There was no smell from that facility, other than standing beside where that hook was dropping the waste into the rotary kiln.

Mr. Breaugh: A lot of the concerns we have heard about the Smithville site are about getting the stuff there. What happens if there is a spill on the road or something goes wrong in the plant? For example, in a lot of rural parts of Ontario with volunteer firefighters, they do not know what is in a truck that turns over on Highway 401. They have no idea how to treat it if a fire breaks out. They may cause more problems than they can deal with by themselves, so the tendency is to say, "Just let her go until we can figure out what to do with that." Are there concerns like that being expressed in the community? These trucks are rolling through their communities.

Mr. Schmidt: First, at the GSB facility in Bavaria—I talked about this—in Ebenhausen, they get about 60 trucks a day there. They have operated since 1976 and they have never had a mishap yet with any trucks coming from all the places of origin, from the generators. They have emergency responses in place and the trucks are marked, but they have never had to implement any of this as of today.

1100

Miss Roberts: The trucks are marked very clearly, though. Everybody knows it is hazardous waste, right? Because those trucks we saw were very distinctive, where we try to hide ours a lot more or would appear to hide them a lot more.



Mr. Breaugh: In my community, Ontario Hydro is trying to convince us now that this big tritium delivery truck is really safe. The only thing safe about it is that tritium plant separation facilities have not been working very well—they have worked three days since they got them cranked up—and the truck has not been on the road. But I know that when that truck goes on the road, that big, ugly sucker marked "tritium," I am going to get phone calls from people who say, "What the hell is that going down Highway 401?" I am going to have a difficult time explaining why they are out there with that.

Mr. Faubert: Basically, my question was answered, because I was interested in the emission or stack discharge. Is that steam primarily just gaseous water?

Mr. Schmidt: Of everything that comes out of the stack, you can say 99.8 per cent is water vapour and air; nitrogen, oxygen and water vapour. The rest is contaminants we have identified as permissible to discharge. We would like to scrub right down to zero, but it is not possible. You are correct. That is what it is: water vapour and air. The reason is that there are a lot of gases coming out, but there is a lot of combustion air required in order to complete the combustion. That air, then, goes through the system and goes out again.

Mr. Faubert: You would have a specification on the discharge and you would meet it. I did not hear the answer that it was actually tested coming out. Is it actually tested and do they do that on a regular basis?

Mr. Schmidt: We have shown expected discharges from our incinerator stack of the different contaminants we have identified, whether it is acid gases, heavy metals, particulates and so on. In the Biebesheim facility, for instance, also GSB, every so often the facility gets tested very carefully and very diligently with the most modern instruments now available. These results are published. They are very low compared to regulations. You have to remember that in many cases all this is regulation-driven. If the regulation is tight, then the discharges will be met. In the HIM facility they do much better than regulations.

Mr. Faubert: I would assume the discharge changes depend on what is actually being burned. Do they burn polychlorinated biphenyls there?

Mr. Schmidt: Not at HIM. The facility is designed to burn PCBs, but with the quantity of PCBs they have available for burning it is more economical for them to ship it to a facility that Bayer operates near Cologne. Bayer gets other PCBs because of the fact it will operate at higher temperatures with PCBs. The small quantity HIM gets does not warrant burning PCBs in their particular case.

Mrs. Grier: I was interested in asking Mrs. Garr about the communities. You heard some concerns; it did not sound to me as though you heard opposition to the plant. Had there been opposition before it was constructed and is there now any organized or unorganized opposition or monitoring about the facility?

Mrs. Garr: I kept hearing about opposition and I kept searching it out. People would say: "Mrs. So-and-so who works at the bank is opposed. Go and talk to her." I would go and talk to her and it did not sound to me like opposition the way I would expect opposition.

The people had a real respect for this facility, a respect for the

potential danger that was there. Although they had not experienced any problems with it and did not expect to, they always mentioned that they respected the danger that might be there. They also respected the management of the facility. I think that was the critical issue in Biebesheim, the fact that they felt they could talk to the management, the fact that if there had been a problem the management would come to them.

This had not always been the case, but my understanding was that within the last couple of years, the management of the facility has become much more responsive to the concerns of the community. The mayor told me they have now set up a committee of residents, politicians and management of the facility as a liaison committee, which apparently is operating quite successfully.

Mrs. Grier: Who manages the Biebesheim one?

Mrs. Garr: A Mr. Conradi.

Mrs. Grier: But is that private, public? What is the operation?

Mr. Schmidt: It is state-owned and industry-owned. As we have described it on one of the pages, it shows the ownership. The state of Hessen controls all the hazardous waste management in the state. Industry has some capital moneys involved in this, but the HIM facility is responsible for managing the waste even if they do not treat the waste themselves. They are still being contacted and they have to identify where the waste should go. If it does not need treatment it goes directly to landfill, but they are the managers of the waste.

Mrs. Grier: Finally, I want to ask about the political opposition within the state. Is there a Green Party there, and if so, what attitude does it take towards the facility?

Mrs. Garr: There is a Green Party. It is my understanding that at one point the member for that area was a member of the Green Party. Was he?

Mr. Schmidt: Yes. Also, the previous Minister of the Environment belonged to the Green Party. He was subsequently ousted. He had made a commitment to the people that the Green Party would never allow a third incinerator to be located at Biebesheim.

Mrs. Grier: Why would they have said that if there were no concerns?

Mr. Schmidt: That is what he had committed to the people, because the Green Party is opposed to expansion of hazardous waste. They recognize the need to treat hazardous waste as it exists now, but they say if you allow expansion, then industry will not have the incentive to reduce its waste. That was their opposition.

Mrs. Garr: The other politically interesting thing is that there is an election in Biebesheim this year. I talked to the mayor about the expansion of the third rotary kiln and asked him if that was an issue. He said it had not been yet, but said, "Contact me next year to see if I'm still mayor."

Mrs. Grier: He supports the expansion?

Mrs. Garr: Yes, very much so. He is not worried about the image of that community at all. He said it has been a very positive thing for the community, along with a substantial amount of employment. About 60 per cent of the employees—



Miss Roberts: Is it not monitored on a day-to-day basis? Do they not have a monitoring of the emissions from that stack on a minute-by-minute, day-to-day basis?

Mr. Schmidt: The answer is yes. The emissions are monitored continuously, but you can only measure continuously for those things for which instruments are available. Instruments are available to monitor continuously for opacity, which is particulate matter, for acid gases like hydrogen chloride, HCl, sulphur dioxide, SO<sub>2</sub>, and HF, hydrogen fluoride. These things are measured continuously, as are the normal combustion parameters, carbon oxides, carbon dioxide, oxygen and so on.

Miss Roberts: I understand that, but I am interested in the hazardous part. What you have said to us is that every now and then they have it monitored.

Mr. Schmidt: No. Hydrogen chloride and sulphur dioxide are all hazardous parts and they are continuously monitored. You cannot monitor heavy metals continuously, but every day samples are extracted from the flue gas for heavy metals and they are analysed daily. We plan to do exactly the same with the most modern equipment now available. Also, the state insists on a complete test every so often by independent testing. A laboratory comes in and does a lot of this testing and that is usually reported in report form.

Miss Roberts: Do they report their day-to-day testing as well?

Mr. Schmidt: The records are kept. I do not know if the ministry, for instance, would want to see them every day, but it is all there.

Miss Roberts: Are we going to do the same thing with West Lincoln or wherever it is?

Mr. Schmidt: Our plan is to do exactly the same: continuous monitoring of all the parameters that can be monitored continuously, to the extent instruments are available; then daily monitoring of those things you cannot measure continuously; then periodic monitoring of those things that do not need to be monitored daily.

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Miss Roberts: How often is there independent testing?

Mr. Schmidt: We have not determined this yet. I think a lot depends on the government requirements, the requirements of the ministry of the environment and the people.

Mr. Callahan: Mrs. Garr, did you ascertain or did you try to weed out the people you talked to to make certain they were not employed by this industry?

Mrs. Garr: I did not deliberately do that, but I think that by the way I approached the trip, that happened. I talked to the farmers, who obviously were not employed there. I went up and down the streets in the village and talked to people in the stores, salespeople who were there and were available.

Mr. Callahan: Because as I understand it, 60 per cent of the people in that little community are employed in—

Mrs. Garr: No, 60 per cent of the employees are from the community.

Mr. Callahan: Are from the village.

Mrs. Garr: Yes.

Mr. Callahan: So that spills over into the question of the shopkeepers and the mayor in terms of their assessment. Was there any attempt to try to separate the sort of "We're putting up with it because it is economically important" from the factor that "It's a lovely facility and we love it and we really want it in our community"?

Mrs. Garr: I was not asking them if they loved it; I was asking them if they were able to live with it successfully and continue their lives without a lot of stress. The interesting thing is that the people I talked to in Biebesheim often said, "We aren't concerned, but you may find more concern in the surrounding communities: Pfungstadt, for instance." So I went to Pfungstadt and talked to people there and they said to me, "Oh, we're not really concerned, but probably the people in Biebesheim are the most concerned." I had these two opinions.

Mr. Callahan: Okay. I recognize that in West Lincoln you are not going to have that same degree of reliance on it, because of assessed value or employment. I would not think so anyway. Are you going to have the same type of employee and number of employees at West Lincoln as they have there in Germany?

Mr. Schmidt: We intend to have about 160 employees to start. In Biebesheim they have less, because they have only the incineration part. But in total, they have also the same number of employees within the other facilities.

Mr. Chairman: Mr. Dietsch and then Mr. Miller and we will try to wrap it up.

Mr. Dietsch: I was wondering if one of you, I am not sure which one, would be able to answer this question. I was curious to know whether you were aware of the time it took to develop these projects, for them to take place there.

For example, I understand you to say that in Biebesheim they are putting in a third rotary kiln. Has that been on the drawing board for just a year or has it been two years in the planning? I am trying to draw a parallel between the length of time it has taken us in West Lincoln to develop a site as opposed to how long it takes them in their country. Do you have any idea? Can you answer that question?

Mr. Schmidt: Yes. They do not have an easy life either. When you site a facility and expand a facility, you do get opposition, especially, as I explained before, from the Green Party. The minister of the environment had vowed that Biebesheim would not be expanded, because of reasons I have given. They have then looked at four or five other communities in the area to see whether they could site an incineration facility there and the opposition was there, the same as we experience, so there is no difference from that point of view.

With the new party back in power again, they have gone back to Biebesheim as the most logical place for expansion, for economic reasons and



also from the people's perception that it is really not bad. So they have great opposition about the landfill. They developed a landfill about five years ago in the state of Hessen, and that is why they do not have a depository yet for the residues. There they have people opposition.

The landfill is not in that community. It is near Frankfurt, which is about 70 kilometres from that community. They have not been able to site it yet. They have built it. They have done everything possible and they have not been able to get the people's consent. In fact, the people have taken them to court and it is just being resolved now. They have spent about 50 million deutsche marks on the landfill development and it has been sitting idle for five years.

Miss Roberts: Mr. Dietsch's question was: Has it only taken them five years? We have been doing this for 10 and have it starting now. How long does it take them?

Mr. Schmidt: It is five years now since they built the landfill. It took them time before to site it, but I could not tell you exactly when they started siting it.

Miss Roberts: That was what he was asking. All he wants to know is how long it takes them, because we have not even started building and we have done 10 years.

Mr. Schmidt: I would say, without getting it verified, that they would have looked at this landfill at the same time they started with the facility. That was 1978, and in 1979 it was built. They would have looked at the landfill at that time as well to have a depository for the residue.

Mr. Miller: What do they use for energy to burn this?

Mr. Schmidt: First, the waste is energy that is burned and then the supplementary fuel is oil.

Mr. Miller: What do they do with the steam? Is there any use made of that?

Mr. Schmidt: They are generating electricity. They use the electricity in their own facility and whatever is surplus is fed into the electrical grid.

Mr. Miller: So that way it is recycled?

Mr. Schmidt: Yes. In this case, they make use of it. We have looked at the economics for West Lincoln and we do not see it economical for us to generate electricity.

Mr. Miller: That is strange. Why?

Mr. Schmidt: Economics.

Mr. Miller: But they found it economical over there.

Mr. Schmidt: The cost of electricity is much higher in Germany than it is here.

Mr. Miller: Ours will not go that direction?

Mrs. Grier: They do not have a monopoly like Ontario Hydro.

Mr. Miller: Well, Ontario Hydro is co-operating quite well.

Mr. Chairman: Thank you for taking the time to come this morning to make your presentations. They were very enlightening, with some good dialogue with regard to the subtleties you have in mind. We will very likely make a decision this morning as to whether we are travelling. It does not look too promising. However, we will let you know right away. We want to thank you for your time.

Ms. Austin: Thank you for having us.

Mr. Chairman: Our clerk has a couple of items she would like to discuss with the committee.

Clerk of the Committee: Does everyone have a passport?

Assuming we do go, there are a couple of things the committee should be aware of. One is that we have sent a letter to the European Community asking that the committee be briefed in the agricultural area on the following matters: marketing, funding and general matters and then, as a supplementary, some interest in international trade. We also sent word that we would be interested in learning more about the cross-European regulatory procedures for the distribution of farm products at the wholesale level as well as farm products marketing. We have also asked for information on supply management, export subsidies and adjustment assistance.

Ontario House in London is setting up meetings with some or all of the following: the Department of the Environment, the ??Ministry of Agriculture, Fisheries and Food, the Intervention Board for Agricultural Produce, the Covent Garden Marketing Authority and the Produce Packaging and Marketing Association. We have also asked for meetings with the Securities and Investments Board and possibly some of the agencies that deal with parks: the Countryside Commission, the Nature Conservancy Council and the National Trust.

I hope to have more information on that by Friday, which, again, I will distribute to you whether or not the committee goes. The itinerary I gave to you last week said the hotel in Brussels was the Brussels Europa. It is now the Sheraton. The other thing is that, again, even if we are unsure of whether we are going, you should probably have your passports or make sure your passports are updated. If any one intends to travel to France, they will need a visa as well as a passport.

There is one other question I have. The Ministry of Intergovernmental Affairs has indicated it does not think we will require an interpreter in Germany. The cost of an interpreter is roughly \$350 a day plus expenses. I am not sure what the committee's feeling is on that. Edgar Schmidt seems to think it might be useful for things like the hotel and if you want to do any kind of discussions with members of the community independently.

Mr. Velshi: Can a decision be made there?

Clerk of the Committee: No. We have to arrange for the interpreter ahead of time.

Mr. Chairman: I think it may end up being a wise decision, whenever we go, to have an interpreter for two days.



Mr. Callahan: Is there not someone who is going on the trip with us who speaks German and English?

Clerk of the Committee: Mr. Schmidt, in fact, will be with you and he speaks both languages.

Mr. Callahan: Do we really need it then? Do we not have sufficient with him, particularly recognizing the fact that we may have to arrange that now and lose that money should we end up not going? I think we should just use him.

Mr. Chairman: We would not make the arrangements unless we were sure we were going.

Mr. Breaugh: I speak some German, but only late at night.

Mr. Chairman: Let's have the opinion of some of the people here now about—I talked to Mr. Reycraft yesterday about cancelling and he still does not know whether we should or should not, so I do not know.

Mr. Breaugh: I am not sure we really need Hansard for this. Is it possible to do rescheduling?

Mr. Chairman: Maybe we could suggest that we go into camera. We do not need Hansard for what we want to discuss. We are pretty well done our business. The motion is that we go in camera.

Agreed to.

The committee continued in camera at 11:21 a.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCIES, BOARDS AND COMMISSIONS

MONDAY, MARCH 20, 1989



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Martel, Shelley (Sudbury East NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Jackson, Cameron (Burlington South PC) for Mr. Runciman

Kozyra, Taras B. (Port Arthur L) for Mr. Ballinger

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mrs. Marland

Clerk: Deller, Deborah

Staff:

McLellan, Ray, Research Officer, Legislative Research Service

Witness:

Individual Presentation:

Macaulay, Robert W., Lawyer, with Macaulay, Chusid, Lipson and Friedman



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday, March 20, 1989

The committee met at 2:10 p.m. in room 228.

AGENCIES, BOARDS AND COMMISSIONS

Mr. Chairman: I call the committee to order. I see a quorum. The committee has arranged to meet with Robert Macaulay today. For the committee's information, Doug Arnott, Debbie Deller, Mr. Yeager and I met with Mr. Macaulay back in November to review some of the functions he has been appointed to do by the Chairman of the Management Board of Cabinet (Mr. Elston).

We thought it would be in order to have him in to make a presentation to us and let us know the appointment he has and what the Chairman of the Management Board anticipated he would do. Perhaps we could have Mr. Macaulay come up and take a seat across the front here. I believe he has Sylvia McConnell with him.

When we met with Mr. Macaulay we discussed the regulatory boards such as the Ontario Municipal Board. He was of the opinion that some of these agencies could be reviewed in groups by the standing committee on government agencies; that is, those that have similar mandates. He indicated he would give a list of regulatory agencies to the committee with suggestions for grouping and priority. We thought it would be in order to have him come in and relate to the committee what his thinking is on the some 100 agencies he had classified as a priority.

ROBERT W. MACAULAY

Mr. Macaulay: As the chairman said, with Mrs. McConnell, I had the privilege of speaking with him and the staff for a short time last fall. This is the first time I have had the opportunity of speaking with you.

Perhaps I should just very briefly tell you what I anticipated my responsibilities were. When I was leaving the Ontario Energy Board last summer to go back and practise law, the government asked me if I would undertake a study of agencies. I had been discussing it with the Attorney General (Mr. Scott) and was drafting some terms of reference, but I did not anticipate I would be the one who would be doing the work.

I was rather hesitant to do it, but I had just put out a book on the subject, dealing with agencies across Canada and I had just spent four years at the Ontario Energy Board. It did seem perhaps appropriate to put some of these views on paper, not courting any support, frankly, or turning it aside, but rather putting some views on paper. It was 40 years ago this last summer that I graduated as a lawyer. I have spent that length of time in the field of administrative law, which these agencies are involved in.

I came over to see Mr. McLean. I hope it was not perceived as sort of nattering and complaining. I feel there is a great contribution this committee or a committee like it could make to administrative agencies, which I do not think is the case at the moment. I therefore thought it might be useful if I

spoke with Mr. McLean—I did not know where he wanted to carry the matter—to give some views I had, so you did not suddenly find them in an 800-page report next summer and so that you perhaps could give me some guidance this winter and spring.

The report is nearly finished. It is going to be somewhere between 600 and 800 pages in length. It deals with what I thought were 91 agencies, but are actually 88. There are 580 agencies in Ontario. Some 276 are listed through Management Board of Cabinet and of those, something in the area of 88 are what they call regulatory agencies.

Agencies in this province are divided into three groups: (1) advisory, of which there are very many; (2) operating, of which there are quite a number; and 88 that Management Board calls "regulatory." I personally prefer a different name, but I do not think anything necessarily turns on the name. I think Management Board selects those 88 pretty nearly on the basis that they are decision-makers. How you distinguish between a decision-maker and a regulator I do not know, but basically these are boards, agencies or commissions that issue decisions.

Could I just say this to you: In the province, there are these 88 and they are called 16 different names. Some of them are called boards, some of them are tribunals, some of them are commissions, some of them are agencies and some are foundations, centres, directorates, etc. They all do exactly the same thing, or if not the same thing, it is so close to being the same thing that one really wonders why these 16 different names are used.

The federal government has 32 names for it and they all do pretty well the same thing as well. This makes it quite confusing to the public, very confusing to the media and rather difficult for the public and others who have to deal with agencies, for a number of reasons I discussed with Mr. McLean when I came in in November.

The first major problem is that there is no real consensus among parliamentarians, the public, academics, judges, lawyers or others about why we have agencies. I am not saying people say there are not reasons for having agencies, but there is no real consensus about why we have agencies. What were they created to do? If you cannot agree on why we have them, it is very difficult to agree on what they are supposed to accomplish, and it becomes even more difficult to agree, therefore, on when they are performing well or not performing well. The theory from government—I know this from having been a cabinet minister—is that no news is good news from an agency, but frankly, that is not the best test of whether an agency is performing well.

A major problem, in addition, I would add, is the fact that there is no co-ordination of agencies in the province. As I said, the ones I am looking at are 88. They are under 20 different ministries. As you know, there are more ministries than that, but some ministries do not have any agencies, some have one, some have two, some have three, and three have 17. Three ministries have about half of these agencies and the balance of the ministries have the other. There are 88 agencies and there are 20 ministries.

As a result, there is really very little co-ordination of the agencies' production, the quality of their workmanship, etc., which I think is regrettable. I am not blaming anybody. When I was the Minister of Energy and Resources Management and Minister of Economics and Development and other things, I created six of them myself. I do not think I was any better with



what I did at that time; in fact, likely not as good. We have learned a great deal about administrative agencies since the war.

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The number of agencies that have been produced since the war are likely to be about 400. I do not think I have actually gone to add them up. We have been creating agencies at the rate of about 10 a year for the last 10 years. I think we have sunsetted two or three. I personally think it would be a good idea if the government looked at agencies and said, "A quart bottle will hold one quart of liquid and we are not going to put any more in that bottle until we take a little out."

There are two problems with sunsetting. Sunsetting is a process that was introduced, I think, by Management Board, but it may have been the Ministry of Treasury and Economics before that. It requires that every time an agency feels it is necessary or a ministry decides it wants to change the legislation of that agency, then if it is going to come before the Legislature, it will do a report to justify the continuation of that agency. I have to report to you that is not being done.

I think if that were being done—mind you, I do not know which of you ladies and gentlemen belong to which party. I am as apolitical as one could be on this matter. In fact, one of the great advantages of having been a cabinet minister in another government is that a different government can say: "You know, he just never knew any better. We always knew that one. That's where he was."

From my point of view, I can be really quite objective. I have made mistakes. I have been in governments that have made mistakes. I am not saying this government is making mistakes. In fact, I think its relationship with agencies is perhaps better than governments have had in the past, largely because I think we learn as we proceed through these matters. You see, the courts are 400 or 500 years old. Agencies are 89 years old. The first one in Canada was about 1898 or something of that order.

There were not many of them until after the Second World War. The reason we got into them after the Second World War was that governments really stopped knee-jerking to events and started planning. While the governments were planning and legislating better legislation on more complicated subjects in the future, they were tending to leave the day-to-day decisions to agencies and the bureaucrats within ministries. This is basically the difficulty that has been involved in this matter.

Then we get back to this problem of why agencies were created. Why was this particular agency created? What is expected of it? Let me just give you one of the many problems that are there. There has been fought out at the federal level and there has been fought out in various levels of other provincial governments a constant battle between the bureaucrats who consider agencies are an arm of and an extension of a ministry, as opposed to those who consider agencies were set up to exercise their own independent discretion in making their decisions.

You have this dichotomy that has been constantly going on. Any of you who have followed the Canadian Radio-television and Telecommunications Commission legislation will know the fight that has been going on in Parliament since the 1970s. The ministries have wanted to control the CBC and the CRTC has wanted to control it too. The legislation is very ambiguous. We

have had this here in this province in the last year and I really would rather not go into it at the moment. But there is this dichotomy and it is quite difficult.

For example, I will put something out on the table for you to consider. There is another one that is constantly referred to. I know this because when I was chairman of the Ontario Energy Board, Mr. Wong said to me, "You know, I am rather hesitant to meet with you, Macaulay." I said, "Why?" He said, "Well, it is the independence of the energy board in relation to its responsibilities." That was a view that had been imbued in him through some of the staff. On the other hand, there are other ministers who feel an agency is merely an extension of the ministry.

This then leads to the problem about independence. What do people mean about independence? Do they mean they are independent in all respects? Well, the answer is no. There are a lot of people who, when I say this to them—I teach at the university and I write and I do a few things that come to other people's attention on this subject. Some of them do not necessarily agree with my views. I think politicians understand and agree with me, but you cannot have the government and the Legislature wanting to go west while the agencies want to go east.

With responsible government and the supremacy of parliament, somebody has to be in charge. Therefore, agencies have to account. They account for financing; they account for the staff support; they account in so many ways. They account to you members of the Legislature through the ministry.

Many ministries confuse that with thinking agencies are wards of the ministry. The fact is that you in the Legislature created the agencies and you assigned those agencies to one of perhaps 20 ministries that account to you, rather than the 88 agencies doing it. It is a complicated relationship between agencies and the Legislature and the ministries and the members of the Legislature.

Okay, having said that, where does that leave you? I have been looking and I have interviewed I think nearly every chairman, many outsiders in the country and I have carried on extensive correspondence with telephone calls and so on with a similar kind of setup in Australia, New Zealand, England, France and so forth. I have talked to a great many people.

I have rather come to the conclusion—when I was where you are 20 years ago or whenever it was, I guess I really did not have either the interest or the time; I am not sure. I will not suggest that you do not have the interest, but I just do not think at the time I perhaps—well, there was not really anybody writing on this subject and really talking about this subject and teaching this subject in the 1960s because it was so new.

I feel agencies could do a great deal. They are very important. They have a tremendous influence on the conduct of government in this province. I feel they would be strengthened considerably if the members of the Legislature had a more active hand in communicating with them, understanding them and dealing with them. There are several suggestions I have to make, if I may. These will come out in my report, unless I get persuaded by you that I am making an error.

There are 88 agencies. You have the committee on agencies. There are 580, but there are 88 that I am specifically concerned about. I have looked at the last two or three of your reports, and the impression I have—I may be



wrong about this, Mr. Chairman—is that you see four or five agencies in a year. Sometimes the agencies you see are operational agencies. Those are not the agencies I am looking at. I am not suggesting for a moment that they are not important. They are important. But 88 agencies should be seen much more frequently, with great respect.

I am not suggesting you are not doing everything you can. I am talking about the structure that is established by which agencies can be brought forward to this committee.

I think there is room for a committee on what you may call administrative agencies. They are not the operating agencies and they are not the advice-giving agencies; they are the agencies that are making decisions, like the Ontario Energy Board for one, which will make decisions touching \$11 billion and covering thousands, hundreds of effects on the economy of the province. That board I know better than most, but I do know some others as well or fairly well.

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I have spoken with the auditor of the province. He believes, and I mentioned this to Mr. McLean, that if there were a committee on agencies that saw just the hearing agencies, and it were co-ordinated each year with his particular list of investigations in agencies, because he cannot look at them all either, and co-ordinated in such a way that both your committee or whatever committee and he were to co-ordinate—and this is my understanding of what Mr. Archer has said to me—he feels it would be quite beneficial.

May I just say this to you? Any agency which knows it may get called in the next year or two in front of this committee and thoroughly examined will become a better agency by that fact alone. Second, you could see them all, either in groups or through a co-ordinating body, and there is no co-ordinating body in this province. As I started out by saying: 88 agencies, 20 ministries. The 88 agencies all have different kinds of rules. They have different kinds of procedures. It is very confusing for the public to know: "Am I going before an agency in which I have to have a lawyer? What are their rules?" "I am sorry, madam. There are 88 agencies and they have 88 sets of rules. In fact, madam, they don't all even have rules."

The story can be continued in so many other ways. Some agencies have brochures set out that are very excellent, telling the public how they can participate. Others have none. What we really lack is some co-ordination. I think we could create a council of agencies in this province and I am going to recommend that—whether it should report to a cabinet committee or where it should report I do not know—on which there would be agency representation. I think that council should discuss with you, or with a committee on agencies that deals with these 88 administrative agencies, who is going to take the bull by the horns this year so that each agency—it would be 21 or 22 a year—would know the chances of coming before your committee or another committee like yours but dealing specifically only with administrative agencies and would have to have prepared some representations to you as to what it is going to say. They could be briefed by your staff. They could be looked over by you and you could decide, then, whether you wanted to call them in. If you called them in, you would have some prefilled material from these people which could be the basis of your inquiry.

The impression among the agencies is that they will not get called, they will not get questioned, and when they get questioned it will not be in very



great depth. I assume you are all parents and have children, and you have all been children; at least I have. I know very well that I tried not to garner the disapproval of my parents and did what I could when I thought they were going to be watching me particularly. I do not think agencies are very much different. I think they could be and should be brought before a committee that really understands the agency problem and would bring out the very best quality.

I do not want to leave the impression that the ministries are not interested in them but, quite truthfully, when I was on the energy board I used to phone the Premier's office from time to time and I would say to Ed Stewart, "Well, Ed, I haven't talked to you for about six months." He said: "Bob, that's how it ought to be. No news is good news." I am quoting pretty closely.

On the other hand, when I was Minister of Economics or different ministries I had, I was very interested in the agencies I had. I was not trying to explain the differences, but I was just very interested in the agencies that I had. I met with them on quite a regular basis. Some ministers have the view that they should and some have the view that they are independent. Mr. Wong felt he should not really be having anything to do with us. He wants to be able to say, "Who are they?"

I have watched the debates in the Legislature on the Ontario Automobile Insurance Board and you can see that very delicate balance of the government wanting to be able to leave to the agency the independence and responsibility that goes with being able to blame it as well, as opposed to having some umbilical cord of communication with it.

I think these things take a certain amount of judgement, but they are certainly not going to be attended to just by vacating the field.

I do not know whether I have said anything that is of any interest to you at all. I have been half an hour. It is likely the most boring half hour you have ever had, but if there is anything else you would like to talk about, I would be happy to try to enlarge upon it.

Mr. Chairman: We will have some questions and that will give you the chance to continue.

Mr. J. B. Nixon: I, for one, found what you had to say very interesting. I have a question about the nature of the independence that you talked about and the complexity of that independence and what it means.

One concern I have—and it is not a concern that suggests to me that we should not do what you are saying, but it is how we go about doing what you are suggesting—is that when we look at regulatory agencies one thing that might concern me or a concern that might arise is because the interest of the committee in that particular regulatory agency may be piqued by either of two things. It may be piqued for a number of reasons but I can think of two things which give me cause for concern.

One is a particular statutory decision or quasi-judicial decision. I think of the automobile insurance board making a decision on rates. People say that is outrageous and the board should appear before a committee of the Legislature to justify it, when in fact it has gone through six months of hearings and delivered a long decision in which it tries to do just that: justify what it has done.



The other thing is when the committee members' interest in a particular regulatory agency may be piqued not because of the operations and decisions of that regulatory agency but because of their concerns about the legislation either creating the regulatory agency or the legislation which is designed for implementation by that regulatory agency.

I am wondering if you could comment on whether you think it would be appropriate for a committee to review a regulatory agency when the committee's interest in reviewing that regulatory agency was piqued either by a particular quasi-judicial decision of that agency or because of the concern or objection to the legislation which was passed by the Legislature implementing that agency.

Mr. Macaulay: Those are both thoughtful questions, let me observe.

Having been a minister, having been a practising lawyer, having taught and having been a chairman of an agency, I would say this to you: I do not think agencies should be called before your committee so that you can dissect and tear apart a decision they have made. There is a concept in law that when an agency has given its decision, to use the Latin phrase, it is functus. It is finished with it.

If somebody wants to— May I just tell you? Can I just take a minute and tell you? There are five ways you can deal with a decision other than dealing with it as we just talked about a second ago, namely coming here. There are petitions from, I think, eight acts, eight different agencies, to the cabinet. There are appeals I would think in about 30 per cent of the agencies mandating legislation to the court. There is judicial review to the court, which is a very different thing from appeals. Four, the Ombudsman is in right up to his you-know-whats in every decision that an agency has given. Do not misunderstand me. I am not objecting to it. There are certain comments I may make about this if we get into it today, about the Ombudsman, but he is there. Under section 16 of the Ombudsman Act, even though the case law is in favour of the agency's decision, even though the legislation requires them to do something, he has the right to say, "I still think it's wrong." He has the right to take that agency to the standing committee on the Ombudsman and actually reverse the decision of the agency.

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The fifth and most useful power to look at an agency—some agencies have the power, some do not, and I am going to recommend they all do—is that they have the power to review or rehear one of their own decisions in the event they feel they have made an error, omitted a fact, misunderstood some law or whatever.

Those are five major avenues to look at agency decisions, only one of which is open in the courts. There is no petition from a court decision. There is no judicial review of a court decision, there is no this, that and something else. There are five safeguards, so I would not think it would be necessary to come to this committee to tear apart a decision.

On the other hand, using a certain amount of natural discretion which comes from the responsibility of being here, I think there are a great many things you can discuss with an agency about the ramifications of a decision it has made. How else will it affect the public interest?

One of the biggest problems the courts have with what we call regulatory



agencies, or whatever name you want to use for them, is that they do not understand the public interest. I am sorry, that is not meant to be an unkind comment. They do not deal with a phrase called "the public interest." When you have a case before a court, you have Betty and you have Jim. Jim hit Betty. "Did you, Betty? Did you hit him?" That is what their decision is there for. They are deciding between something that is called inter partes. When many agencies have a case in front of them, there is Betty and there is Jim, but here is the public interest over here and that is basically what the agency is making the decision in relation to. Neither Betty nor Jim may get a decision they like, but the decision that comes out is basically directed towards the public interest.

For instance, the energy board is required to fix rates which are just and reasonable. The gas companies do not like them, because they are too low and do not give them nearly a high enough revenue, perhaps. A steel company may say, "Well, they ought to have that general revenue, but you're asking me to bear too much of the burden of their revenue requirement." They want it down, the gas company wants it up and my mother-in-law, who never was happy with anything, starting with me, wants another rate.

All I can say is that the basic foundation of many agencies is that they have to look at the public interest. Frankly, I think it is necessary to have a better understanding by the Legislature and committee members of: "What is your perception, agency, of the public interest? What is your perception of your relationship to us?" etc. I think there is such ambiguity on the subject that it is a very healthy thing. I hope you will forgive me for saying it. I think it is very healthy for this House. If I were still here, I would think I would want to know. I would not give a damn about whether somebody had the impression that I was going to be getting into something; that they are independent and I should not be this and I should not be that.

They are your agents. It is called an agency. An agent is somebody you have hired or appointed to do something for you, and he has the ostensible authority to do it until it is taken away from him. But if he does it when he has your authority, you are responsible for it. You cannot walk away from that. You have an absolute right to know what they are doing, not to call them in and berate them about a decision.

That is the first point, Mr. Nixon. The second point I think you were asking me was the question of whether the legislation the agency is trying to operate under is relatively satisfactory. Have I grasped what you were saying?

Can I tell you—you did not ask me this basically, but a part answer is no and I think the Legislature ought to hear about it. I think the Legislature ought to know. They are your agents.

There is legislation, a directive of Management Board, which says—and look, I have interviewed everybody who has a gavel in his hand in this province on this subject—that when legislation is going to come forward to you people to amend or add to the mandate of an agency, it should be discussed with the chairman of the board, or agency, whatever you want to call it, to see that it is encompassing all of the things he feels should be brought to your attention. If the ministry then does not approve of what his suggestions are, fine, but you have heard them. You cannot canvass anything if you have not looked.

I think this Legislature, and the Legislature in this committee, has a right, because, as I said, the agencies are not wards of the ministries. The



ministries are there to provide them with services, with finances and with staff and to account to you, because you cannot have 88 of them coming in. The committee can, but the Legislature, as such, cannot.

I think it is a question of clarifying. Many ministries are very protective and concerned about their agencies; others just take them for granted. I think there is an awful lot of legislation that—and this is what I am really going to try to do. I am going to try to recommend to this government one amendment made in many parts to the Statutory Powers Procedure Act which will apply to all 88 of them without amending 88 different acts, to give them certain powers.

Let me give you two classic examples. There are many agencies that say, "God, do we have the jurisdiction to do what we have been asked to do," or "Do we have the jurisdiction to do something we really think we ought to do?" Some agencies, I think about 25 per cent of them, have the authority in their statute to ask the courts, "Have we the jurisdiction to do it?" That is called stating a case, but the majority of the agencies do not have that power.

I think if we have any confidence in the courts and if we have any confidence in the agencies and they are in some doubt, why make a decision that then has to be taken to the court and go through all kinds of faldral there to find out whether they had jurisdiction to do it? It can be done very quickly and very inexpensively. I think most agencies, if they came forward, would say to you when you were questioning them, "That is a power I think we should have."

Let me give you one other example, and then I will let you go. You will want to have a Tylenol and wish you had never asked me anything. The second major problem that I think all agencies face is that they can make errors. There can be a set of facts, "God, I didn't know about that, but we are now functus," or "There is some law that's just come down in between the time we heard it and we gave the decision," or the Ombudsman comes forward and he says: "I think it's just a rotten kind of decision that you've given. Why is that? Let's talk about it a little. We'll have a little chat about it."

Then an agency, and we had this case not long ago—which one was it?

Interjection: The one about the criminal injuries?

Mr. Macaulay: CRAT? Yes, the Commercial Registration Appeals Tribunal. A classic example was that they gave a decision. Having given it, they then realized that perhaps they had made an error and they would like to rethink it and they had no power to rethink it.

The courts have been doing things in their way for 100 years—not 100; 400 years—because Bill and Jim were there, and when you have Bill and Jim, or whoever she was the last time I analogized to her, they have to have a different kind of a proceeding than when you have the public interest involved. There are all kinds of things you may look at. The court judges are generalists. They sit in panels of one.

Agencies are considered to be made up of specialists, or are supposed to be, either because of an ability they brought to the agency when they came or acquired because that is all they do every day. The difference in procedures should be substantial, but the courts have to be told that by this Legislature, that it wants them to be different. I think the courts are perfectly willing to treat agencies differently, but they cannot and will not

if the Legislature, in its legislation, does not tell them to, because they rely on precedents they have been using since Caesar landed at Thanet. Well, not quite that long.

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Mr. J. B. Nixon: Just as a follow-up question, let me put two situations to you and ask you to give me your comments on either. For instance, we could have the Ontario Securities Commission before this committee and the commission could be asked various questions about the insider trading provisions of the legislation, the Ontario Securities Act, and its ability to regulate insider trading, its ability to enforce the rules relating to insider trading. On a completely different tangent, they could be asked questions such as: "Do you think we should be regulating insider trading? Do you think, as a matter of fact, that is something we should recommend you not regulate?"

I am trying to find out where the edge of this committee's mandate would be. I would see it as quite proper to deal with the first type of question. When you get into the second, we do not make law in this committee. If you see that as part of this committee's mandate, how would it then implement any recommendations to that effect, other than by making a recommendation to the Legislature when, in the real world, you know—

Mr. Macaulay: I might tell you there are a hell of a lot of us in this province who do not have that right.

Mr. J. B. Nixon: I agree.

Mr. Macaulay: There are 125 of you and there are nine million of us.

Mr. J. B. Nixon: Yes.

Mr. Macaulay: I think that is a pretty powerful weapon to have, to be able to make recommendations. Look, I have not been but I should be careful to explain that there is another constituency out there, and that is the ministry. I think many ministries take the position that if there are going to be legislative recommendations going on around here, they should not be emanating through an agency having conversations with a committee, and so you have to be sensitive about that.

But because there can be problems does not mean you should not enter into it. Who likes the pinprick of a needle in the arm? Nobody likes it, but the benefit that you are talking about from the inoculation is worth it. I think inquiring minds are the most advantageous characteristic of our society. I think agencies should be here.

I honestly have to say this and I hope you will not take it as an offence: When I was a private member of the Legislature, I did not know nearly enough about the agencies for which I basically was responsible. I realize that now and, in my own modest way, am trying to make up for it, by teaching it, by writing on it, by undertaking this kind of work and hoping, in the process, to enthuse more legislative members about how the agency system works in the province. I think you could have a major role in it.

If you go at it modestly and you develop it and you go at it slowly, you will develop criteria for where you ought to be. I think man has some native views about what is right and what is wrong. I really do. I have tremendous



faith in it and I personally think you would develop standards in relation to these agencies when they come forward.

I am glad you mentioned the stock exchange, because I think that is a classic example of an exchange which is really what I would call an operative exchange, an administrative exchange, an administrative agency. It is not like many agencies and boards that hold hearings and that basically is all they do. There are some that do these other things as well. This is why it is another problem. It is a very complicated picture, these agencies. Agencies are not well understood, because they are neither courts nor government; they are somewhere in between.

Mr. J. B. Nixon: More by way of observation, I was struck by your comments about the discussions you had had with the Provincial Auditor. In my very brief career here, and even briefer career on this committee, I have noticed the overlap that exists between this committee's role and that of the standing committee on public accounts and how frequently we end up looking at the same things, the same issues, the same agencies raising the same concerns. I am not suggesting a merger of the two committees; you are on to something is all I have to say.

Mr. Chairman: I have a couple of questions I would like answered, since you are finalizing your report. This committee meets for two hours during the time when the Legislature is sitting each week and has been allotted one week during the recess. As you can see, our time is fairly limited as to the numbers we can look at. I would like you to elaborate just a little more on what you refer to as a council of agencies and what your interpretation of that would be.

Mr. Macaulay: I will have to say to you that my recommendation will be that your committee or whatever committee looks at the agencies be allotted more time, that there be a greater continuity of members from year to year so that there is a continuation of an understanding of what they have done, that they stay longer on the committee and that they have more resources available to them. I think in the long run it will save a great deal of money.

As far as only having two hours goes, if what was done and you had adequate staff, you could decide if there is—forgive me, but you have asked me the question. If you are mad, I will go. It is nearly three o'clock, so you know you do not have much longer to put up with me anyhow. If I were here, as a private member or as the chairman or something, I think I would ask that we did not have to sit on so God-damned many committees, that we could have longer time on them, that we could get better pay and that we could have better staff. That would be the first thing I would press for.

Then, it seems to me, if you circulated enough material or inquiries to the 88 agencies, told them six months ahead that you were likely to call them and, "These are the criteria of the material we want you to file with our staff," and that is reviewed by your staff, you can tell somebody who really knows what the hell he is doing. You can tell from reading the material. Make it six pages, eight pages, whatever it is and you get a sense that "They are raising issues that I think I would like to ask something about."

Therefore, if you took 22, even though you are talking about two hours, with the filed material in advance I think you can limit yourselves to questions that have arisen on the filed material to start with, many of them assisted by the staff who have scanned them, scoped them ahead of time.

The council I am proposing to the government would be a council of eight, 10 or 11 people, composed of, I think, five members of the leading agencies—they would revolve every two years so as to try to get greater representation among the agencies—representatives perhaps from the bench, the Law Society of Upper Canada, academia, the civil service and so on, to make 11 in total. They would have about seven, eight, nine or 10 major jobs. As a matter of fact, I am just working on my computer at the moment on this very problem, on the final, I hope, draft on this matter. I think there are actually 11.

Were you are asking me what they were going to do? What were you asking me?

Mr. Chairman: I just wanted you to elaborate on it, to find out what they would and who they—

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Mr. Macaulay: There are any number of places they could account to but, in my view, they would account to a cabinet committee on agencies that would have some representation from different ministries. For example, the Attorney General is interested in law and equity and the Chairman of the Management Board of Cabinet is interested in a bigger bang for the buck. Many of the ministries are interested in their relationships, so there would be a fair representation on the cabinet committee of a broad spectrum.

That is whom the council would report to but it could report to the Speaker, it could report to the Legislature, it could report to the Attorney General, it could report to the Premier, it could report to Management Board. There are a number of choices. My preference would be a cabinet committee.

The council would have 11 people on it. They would be seconded from ministries and agencies. They would all be part-time, except the chairman. They would revolve every two years. The purpose would be to bring out of the agencies their problems, their recommendations, their ways of dealing with things, so that you could get a consensus, a co-ordination of what has to be done.

Coming from 88 agencies through 20 ministries—let me give you the first classic example. People arrive here as new members. Their knowledge of governmental affairs is quite limited. As a matter of fact, I am sad to relate that even after some considerable service some of them may be rather limited. Why that is I will not go into today, but there is a very serious lack of training and there are no training courses in this province for members of agencies, new people arriving. Management Board, what is Management Board? Memoranda of understanding, what are they? Who is Mr. McLean? Who is what? In any event, there is just a tremendous amount.

The second kind of people there are—you realize 250 agency members change each year? There is a coming and going that makes musical chairs look like really a backroom game. To my mind, it is absolutely essential to have some training for those people who are arriving here. Basically, 20 ministries are only really interested in their own agencies. Frankly, there is a great deal that is just being assumed and is not known.

Second, members who are on agencies are not really able to keep up to date with the newest ways of resolving problems, techniques, hearing processes and so on. We have agencies that have 200,000 open files. How can an agency



hear all them unless there are ways and techniques of case managing, holding kinds of conferences, settlement conferences, alternative dispute resolution and so on. There are new techniques that are being used in the United States that are tremendously successful. But there is no co-ordination, there is no training for our people. There was not when I was here.

I am not complaining about anybody and I think what is being done today is infinitely better than when I was around, but I think training is an extremely important matter. It is like a computer. You are going to get out of the God-damned computer about what you put into it. If you do not put something into these people—the minute they get there, they are on a sitting. There is no time to train them and unless there is a somebody there to do it—well, Jesus, I could go on for ages.

Let me give you one other example. We have no shame in Ontario. We have got 88 agencies. Some have no libraries, some have no hearing rooms, some have hearing rooms and they are sitting in them 25 per cent of the time. We need translators, we need reporters, we need recorders. We need this, that and the other thing. We are going into French hearings starting this fall. Can you just imagine how many French typewriters there are available to type the decisions and type anything else? And the translators?

There should be ways, and I am trying to propose them in the report, in which we can share. You can only share if there is co-ordination. With regard to library facilities, you can go into many agencies and there is no place for the public even to sit down. They are told, through the Freedom of Information and Protection of Privacy Act, FIPPA, that "You can go into an agency and you can get this." Just try to find the girl who has the file, who will let you have it, to sit down and make a copy. That is not in FIPPA. Well, enough of that.

Mr. Chairman: Three others are ready to ask you questions. Marietta is next.

Miss Roberts: I was interested in what you just said about the council of agencies, because I was concerned about that too. I appreciate you taking the time to come here, because it has updated me as well on some of the concerns I have, being on this particular committee.

I would like you to just briefly address what you think that committee, if it is a committee of the Legislature you are proposing, would look like. From what you have said, it would not have to be this big. It could be three or four people who would be involved. It could be a subcommittee of this particular committee, because we still have 420 others or more to deal with. You are suggesting something apart from this particular committee, I assume, because what you are suggesting is work for a committee to deal directly with your administrative agencies. That is what I believe.

Mr. Macaulay: What I was really doing, and I hope you will forgive me for doing it, was trying to resolve a problem I saw with agencies rather than trying to suggest a system which would be complementary or able to be handled by you. I just feel that the agency matter has grown sufficiently large that perhaps it should be broken into two, with one committee dealing only with the decision-making agencies and another committee dealing with the operating and advising. For instance, there is a committee on Ontario Hydro. I remember that when I was vice-chairman of it I appeared here. I do not think they come to you, do they? Does Hydro come before this committee, Mr. McLean?

Mr. Chairman: No.

Mr. Macaulay: There is a natural resource—there are some committees of the Legislature that spend a lot of time with a particular agency. You, on the other hand, are expected to cope with a tremendous number of them. I personally think that if we had a council in Ontario of the kind I was describing, it would have by far the best handle on the 88 agencies.

They could assist in putting the material together, they could see that you were briefed properly, they could suggest to you specific agencies they think should be reviewed this year; they could see that over the four years there was enough of this spread around so that nobody can go to sleep out there.

Miss Roberts: I understand what you are saying, but I just ask you, are you suggesting two separate committees?

Mr. Macaulay: Yes.

Miss Roberts: The one you are speaking of, the one you think could handle the administrative agencies, could be a smaller committee of some sort and one that had semi-permanent members, is what you are saying. For your term of the Legislature you would be here or on that particular committee.

Mr. Macaulay: Yes.

Miss Roberts: Your council of agencies is going to report directly to the cabinet or to a subcommittee of cabinet. How would you see this legislative committee working in with those two other bodies?

Mr. Macaulay: The council is really a role model co-ordinating body, mostly working on consensus except in one field, where I think it should have some strong authority, with reference to the rules of agencies, to make sure that where there are common features in agencies' rules, there is a set of rules available so the public does not feel it has to have a seeing-eye dog to get through the agency system. Where agencies differ, and I think all agencies have certain differences from others, each ministry with each agency can develop the differences.

In short, this council would have about 11 different tasks to do, one of which is that I think it could be of some assistance to the committee system, which there is no way of co-ordinating. There is nobody you can call in who knows all 88 agencies other than yourselves. I am not suggesting that that is not adequate but I know from having been here the demands on your time. Just getting re-elected is a big enough problem for lots of us.

1510

Miss Roberts: So what you are suggesting is that your council of agencies would not be an advisory agency itself and therefore under the same rules as the advisory agencies of which we have been speaking.

Mr. Macaulay: I would set it up basically with half of its members drawn from agencies and half drawn from outsiders, including the public. It would have about 11 functions, two or three of which I have mentioned today.

Miss Roberts: But we could also haul in the council of agencies and say, "Listen, you aren't doing your job," or, "We think this is this and this."



Mr. Macaulay: Exactly.

Miss Roberts: So it would be an advisory agency, as all the other advisory agencies, just at another level.

Mr. Macaulay: That is right.

Mr. Jackson: Robert, it is always enjoyable to have you before us. When I was Energy critic, I enjoyed having you come before us on two occasions. I always found it most interesting and informative, and likewise today. If your time will allow you just a little longer, I for one am enjoying—

Mr. Macaulay: With that charming introduction, how could I say anything other than that I am here for as long as you want.

Mr. Jackson: There are a couple of quick items I will hit on. I could not agree with you more on the whole issue of the training of the individuals called upon to uphold the agencies' mandate, as it were, the appointees. There is no question in my mind that there is a wide variance, especially at that critical first several years.

My most recent experience, which was not a very pleasant one, was with the Rent Review Hearings Board, which is a new function. I had a particularly disturbing incident. I approached the minister and asked: "Do you know what's going on in these hearings? They're brand new. Has anybody been monitoring them to get back to you about how they're working?" She said, "No, we couldn't do that, because we're supposed to...." I got basically the Bob Wong response, which is understandable.

But instead of calling for the resignation of the chair who had violated three elements of the legislation in the presence of the media and so on, I asked her very clearly whether she would not investigate in a subsequent panel, because that panel was thrown out, whether she would get some more experienced people who understood the Statutory Powers Procedure Act, because that was one of the areas where we got into difficulties. The chair had never heard of it before and that scared the daylights out of me, as the legislation clearly set it out. So I commend you for your point about revisions to the Statutory Powers Procedure Act.

I suggest to you as well that the continuity of panel members is important.

Mr. Macaulay: Yes.

Mr. Jackson: One of the press releases indicates the issue of patronage, which has escaped all of your presentation and our questions for the last hour and a bit. That is a new piece of information Mr. Nixon did not cover, because I wanted to raise his points as well.

Could you talk a bit about that, because that was part of the problem I encountered. It was a patronage appointment—I am careful to avoid names—and there is clearly an indication of desire not to learn the procedures. How can we overcome that? I consider them one and the same in terms of problems: someone who is inappropriate as an appointee, and then those who are appropriate appointees who really are not given guidance and direction.

I see that as a dual problem and you have addressed the one. We have not

heard from you about the other, or the fact that you have indicated that not a single province, I think I read in the release, has freed itself of that potential controversy of a patronage-free or a more sanitized, as it were, appointment process.

Mr. Macaulay: First, what is sad to me is that the word "patronage" does not have any consensus in most people's minds either. The word is a really dirty word to some people and not a dirty word to others. Patronage really means having a patron, somebody who has recommended—

Mr. Jackson: In the original French translation, it is a very good word.

Mr. Macaulay: Yes. My feeling is that there has been a great deal done on the question of the appointment process. Many provinces have tried to grapple with it and we have been in touch with some of them very recently. There have been three or four recommendations made in this province. A committee of this House made a recommendation, I think in 1986, and made a report. The Canadian Bar Association made a report in December 1988 and it was called A Submission to the Premier re: Appointments to Administrative Tribunals. I am going to deal with it as well.

One of the functions I felt this council could fulfil was, first, by having agency representation on it, those men and women know as well as anybody the kinds of qualities we ought to be looking for, but it should also have outside representation, I think, to ensure that what the council is recommending in relation to patronage is responsive.

One of the major problems most people find with the agency appointment process is its lack of openness. Let me also say this to you: First, there is the basic assumption that a nonopen system produces poor appointments. Second, there is the assumption that one poor appointment is representative of all the appointments. Third, there is the assumption that a good appointment system will produce good appointees and I do not think that is right either.

So many things can go wrong in the interview process or following the interview process. We do not have the time for me to go into it now, but I have written extensively on this and I hope the report will be helpful to you on it.

What I propose is that, first of all, the agencies be categorized into groups, because what some of the agencies really need are good, decent, kind people who will listen and apply some judgement. But I will tell you something, Mr. Jackson. One of the biggest problems many agencies have is that a lot of people just do not believe they have to be bound by the statute. They just cannot believe this Legislature has provided this or not provided that, and they then want to go beyond it.

This creates a very serious problem. That is partly what the training courses would do, have people understand: "You're not here to do anything except use your judgement within the four corners of the act that the Legislature set for you. You're not here like the Ombudsman to decide, 'I don't give a damn, it's still wrong.' You're here to live within the four corners of that act."

Getting back to Mr. Nixon's question, perhaps some time, if there were a committee, they can come and talk about why the legislation ought to be liberalized or whateverized it might be.



The first thing, I think, is to create an inventory of categories of agencies. For instance, if you are going to go on the film board, I do not think you need to know a damn thing about physics, but I think you have to know a little bit about morality within your own community. But everybody thinks he has that capacity. You start advertising: "All we want are people who are moral"? Shit, I mean, you would be—

Mr. Jackson: You would not get any applications.

Mr. Macaulay: You would be at the head of the line, but the rest of us likely—

Interjections.

Mr. Breaugh: Just you and me, Marietta.

Mr. Macaulay: And sometimes we wonder about you.

Mr. Jackson: You can take Jimmy Swaggart's letter out of your files now.

Mr. Macaulay: So the first thing is to categorize the boards. The second thing then is to provide job descriptions for the people on the agencies. The third thing is to provide, either through this council or a secretariat within a ministry—it would likely be the Office of the Premier—a secretariat that would have a complete inventory of all the appointments, with the dates of expiry and so forth. This really does not tell you as much as you may think you want it to tell you.

Then once a year the council or somebody else would advertise it or gazette it or however it would be done, "The following positions may come available in the coming calendar year." I am not finished there, but I will stop there for a minute.

1520

One agency, which will not be mentioned, put an ad in and got 1,500 replies. They are putting an ad in for one person and they expect 1,200 replies.

Let me tell you some of the problems. It ain't easy, as the bishop said to the actress. I will tell you why. First, the Ontario Human Rights Commission is going to want to know, "Why did you spend 20 minutes with him and no time with me?" Ipso facto, you are into a big problem there.

The second problem is that you really cannot tell without interviews a person's temperament, kindness, thoughtfulness, how they write. You can have them fill in some preparatory material, but it is very hard without an interview to really understand. I have interviewed them myself and then I used to have members of the board interview them, to try to clear up as many things as we could so that we consensually agreed: "That's somebody I'd really like to work with. I wouldn't be ashamed of him. I know he'll come on time. I know he won't be leaving halfway through the afternoon."

We had one person who, about the third time, slept. You could accept sleeping, but snoring is hard. I am not trying to entertain you. What I am saying is that you cannot tell without interviews. If you are going to interview 1,500 people and you are going to give everybody half an hour, you

have a hell of a job, and that is for one job. I want to remind you that 300 to 350 come up in a year.

So it is categorizing of the agencies, categorizing of the jobs, doing a certain amount of advertising. But I will tell you that in my humble opinion, you could not possibly get anybody as the chairman of the Ontario Securities Commission out of the newspapers. I do not think you could get anybody for the Ontario Energy Board. The requirements are such that people do not answer those kinds of ads.

I am not opposed to advertising. If it gives the perception of openness, fine, if that is a price. There are lots of agencies, some of the social assistance agencies, where I think it is very important.

Of course, this government and other governments, but this one in particular, wants cross-representation of age, education, sex, colour, minorities, etc. Then you have decided right off the bat—it is awfully hard to discuss this with you guys—that you want a coloured person. Let's say you do. "It's time for a coloured person on this agency." My God, the problems that creates.

In any event, how do you get into a good, open system? I am hoping to recommend a way of doing it to you. I can only reiterate that a lot of governments have tried it. The one thing they have tried is to create a secretariat; that is, a small section of the Premier's office, the Treasurer's office, somebody's office where there is a total list of agency members, when they retire and so on, and as they come up, they advertise.

To advertise meaningfully, you have to advertise broadly. The advertising for some of our Ontario Hydro cases was \$50,000 for the ads. You are not talking about peanuts. Multiply that by 350. You know right off the bat that you are not going to be able to advertise every time an agency comes up. As I understand it, that is what the Canadian Bar Association report recommended.

It has lots of problems. You may remember that your committee, the committee of the House, recommended that a committee of the House be responsible for doing the interviewing. Honestly, guys, you do not have the hours. If you are going to have interviews, I do not care that the chairman does not have the authority. I always had that understanding. I did not have the authority, but I had the right to be heard and say what I know. I think there are certain investigations that could be done, certain inquiries that could be done. It could be done on a much more professional basis. That still does not mean you will not make mistakes. In any event, I am going to make recommendations. I want to tell you guys I really need you.

Mr. Breaugh: It is kind of too bad you could not generate a little enthusiasm for this job. Your report is going to be a humdinger.

Mr. Macaulay: I try to do things right.

Mr. Breaugh: I feel fairly good about this, like many members who have been around here for a while, because when we first started this process of looking at agencies and asked the question, "How many are there?" nobody knew.

Mr. Macaulay: Right.



Mr. Breaugh: I am not sure we know any more, but at least we have the presence of mind to come up with numbers, so it looks like we know.

Mr. Macaulay: Yes.

Mr. Breaugh: There are two big holes that I still see in the process, even though I think different groups in different ways have tried to put some kind of parameters on this. One is at the beginning of the process. How do people get to sit on an agency for the government of Ontario? Interestingly enough, this House has adopted that report and no one is quite sure exactly what that means. We kind of do some of the things that were recommended in it, but not really. I would like to see what you have to say on that part of it.

The second part is that I am interested in the recommendations you are thinking about in terms of the other end of it: How do these agencies really work and are they accountable to anybody? It seems to me that we really have kind of come to that stage where we have to do some sorting and selecting. This committee is now looking at agencies that the standing committee on public accounts is looking at at the same time. I am not sure that makes a whole lot of sense. I think I need a little more convincing about the process for the Ombudsman putting some cases forward to a committee of the Legislature to review.

The two big holes or problems I still see in the system is that even though we have had a pretty good go-around in the last decade or so of cabinet committees, Management Board committees, you, this committee, a couple of other committees of the Legislature, kicking this around a little bit, we have not fundamentally altered the agency process in Ontario yet. I am still beside myself when I see an operating agency, which has a few million dollars in its budget each year, that has never talked to another operating agency that is doing very similar work in the same province. They have never connected, ever. It is strange.

Mr. Macaulay: This is another thing I think the council can do. We started, four years ago, a thing called the Canadian Council of Administrative Tribunals. It is an organization that now has hundreds of members from coast to coast. We do training courses. We do exchanges of information material on all kinds of research. It is a very valuable thing. I started it for the country. It is a Canadian organization rather than a provincial one.

I have been encouraging—as a matter of fact, if I had stayed with the Ontario Energy Board for the term for which I had been appointed, I would have attempted to set one up in the province. I felt the need was greater across the country when I did it. I am trying to urge it and now they do have groups meeting. Agencies are now holding think-ins. They are now having people come in to teach and lecture. They are really making some important moves, but I think that there can be greater co-ordination and less waste of energy and dollars with the establishment of a council.

As far as the appointment process is concerned, sir, I think there is a lot more I could say to you about the situation. I think, with great respect, there are some weaknesses in the committee's proposal, just as there are, I am sure, in mine and just as there unquestionably are in the Canadian Bar Association's report. Why they did not pay you royalty fees I do not know. However, as we know, lawyers are not big on acknowledging other people's contributions.

Their reports are not that far apart. I think there are certain impractical sides to both of them and I have tried to talk about them in this report. I do not feel I have done justice to what you put to me and I am sorry about that, but God, I have been here an hour and a half and you must be so anxious to do something else.

Mr. Chairman: Any further questions?

1530

Mr. Breagh: Just one other. One of the things we have just done is that we have discovered that we have one of the most effective grass-cutting operations in the free world operating in eastern Ontario. None of us is quite sure why. None of us is quite sure why we spend that much government money cutting grass along the St. Lawrence River, but we do and we have done that for a few decades now. We cannot find it anywhere in the act. There is something that has been discussed at the standing committee on public accounts: part of that commission's mandate is to provide employment in eastern Ontario. It was not written anywhere; it was just kind of assumed. This agency has been up and running for some time now, doing what it thought was the correct thing to do. There has been very little in the way of an effective review of that particular agency or any other.

Mr. Macaulay: That is an operative agency, is it not?

Mr. Breagh: Yes.

Mr. Macaulay: Yes. I have enough problems with—

Mr. Breagh: I think I have just been outfoxed by a great legal mind here.

Mr. Macaulay: No, but I will tell you this: I have to take some responsibility, because if it is the agency I am thinking of, it was set up when I was in the government.

Mr. Breagh: That is right, and it is along the St. Lawrence River.

Mr. Macaulay: Yes.

Mr. Breagh: We will try not to pinpoint it at you.

Mr. Macaulay: I think I could name the birthmarks on all the former chairmen, likely. I cannot help with grass cutting. Sorry. Manure spreading, yes, but not—

Mr. Breagh: Wrong legal department.

Mr. J. B. Nixon: I have a very quick question relating to the appointments process. Mr. Jackson covered a lot of it, but what role do you see for ministerial discretion in making appointments? Let me explain what I am getting at. For instance, if I had the power to appoint people to the Rent Review Hearings Board and Mr. Jackson was out of office, I would not appoint him, because he has fundamentally said, "I do not believe we should be regulating rent this way." I am being fair to him, I think. I would not appoint him, not because he belongs to another party, but because he does not believe in the process.



Another example, when you talk about the Ontario Film Review Board—

Mr. Jackson: But you will admit I understand the process?

Mr. J. B. Nixon: I am not going to admit or deny—

Interjections.

Mr. J. B. Nixon: If I was appointing you to the film review board, you pointed out quite correctly that a lot of that is the application of one's particular morality when the members make judgements. Clearly, whoever is in political office, so long as there is a film review board, wants someone to exercise moral decisions which are at least sympathetic to the governing party. On the one hand, you can paint the black picture of ugly patronage when decisions are made that way. On the other hand, you could say it is ministerial discretion exercised for an entirely appropriate purpose. How do you respond to that?

Mr. Macaulay: I do not know that I can respond to it. I can only say that what you tend to do, I think, is to look at an appointee or a board. I think another reason that I am anxious to have a council is, we have no way of assessing whether a board is performing well or to whom you could take the problems. Not even the chairmen have a real place that they can go to. There is no way of assessing whether certain board members are doing a better job than others. I think we will get to the stage, in this province, where you are not going to be reappointed unless it can be shown that you have performed well. The appointment ought to be based on performance. How can you base reappointment on performance if you have no criteria by which you judge whether there has been a good performance?

On the other hand, I do not know whether Mr. Peterson's view differs from that of Mr. Davis, but my recollection is that the attitude of a number of premiers has been, in the past, that the appointments to these agencies are in fact made in the Premier's office. Therefore, what happens is, there are recommendations made to the Premier's office by the ministries involved, but the final decision is made in the Premier's office.

Frankly, I must acknowledge that both Mr. Ashworth and Mrs. Peterson, I think, have done a very competent job. I am sure there are appointments that have been made that, individually, some of you guys feel are maybe just not as good as you would like to have seen and maybe not as good as you appointed yourself. On the other hand, I can tell you that often with appointments you cannot tell in advance. You can only tell when they have let you down. Let me just finish this one comment, Mr. McLean. Actually, there is the attitude that if you have been a cabinet minister—I hate to say this to you, but I am going to say it anyhow—you are a total idiot. That is the attitude, generally.

When I was appointed chairman of the Ontario Energy Board, I was a professor at university, I had started the ministry, I was the first Minister of Energy in the English-speaking world, I was vice-chairman of Hydro, I had written books on energy, and when it came out in the newspaper it said, "Friend of Davis appointed." It did not matter whether I was the best or worst qualified. They could not say anything nice so they just had to smack me. That kind of crap travels like wildfire. "Do you know anything bad about So-and-so?" You could be hanging on a cross at Easter and nobody would recognize you there.

Miss Roberts: Especially with a skirt on.

Mr. Breaugh: It is not necessarily true that all ministers are idiots.

Mr. Macaulay: I feel I can say those things to you, because one of the worst problems I had to get over after I left the government when I did and went back to practise law was that a lot of people looked at me as if I really must be sort of incompetent; I had been a cabinet minister. I am not saying that anybody else is, I am just saying it is sort of sad. I know the point I wanted to make; you are so charming, I cannot remember what I start out to tell you. The point I wanted to make is that there is an attitude that if you ever appoint a guy who has been a member of this Legislature to anything, it is patronage—and that is bullshit.

One of the most important qualifications a man can have on an agency is to be a good listener, thoughtful, considerate, knowledgeable, understand how the government works, do not be bitching about things you do not need to bitch about and understand what the relationships are. One of the best qualified persons may be somebody who came from this House. I do not care what party he was in. I think it is absolutely awful to condemn somebody just because he has spent some of his life in the public service. I am a little sensitive about this. I do not know whether you noticed the other day that there was a notice in the paper that said, "Mr. Getty's next-door neighbour is appointed to an agency." Nobody happened to say he was the most qualified man west of Lake Winnipeg. Nobody mentioned that, but he was a neighbour of Getty's. Poor Getty.

Mr. Chairman: I have a final question for you, Mr. Macaulay. Maybe it is an observation. I have some problems with the council of agencies you would be appointing. I can tell you why I say that. It appears that it could be another bureaucracy being established. These are only observations I want to make.

Mr. Macaulay: I understand.

Mr. Chairman: What I would like to see is a committee of the Legislature that would meet more often to deal with it. We have committees here that do meet twice a week. We do not happen to be one; we are one that meets for two hours. If this committee did happen to meet for two half-days a week, it would do twice the amount of work.

Mr. Macaulay: I am going to recommend it. I just think you are a very important body, I think it needs to be done, and I think the two of you ought to go into the sunset hand in hand.

Mr. Chairman: I happen to be a firm believer that it should be the elected people who look after the agencies. I think if they had the time allotted to them, it would be far better than having another bureaucracy, so to speak, established.

Mr. Macaulay: Okay. That is meaningful, sir.

Mr. Breaugh: He is a former member of cabinet, too.

Mr. Macaulay: Thank you very much for being so patient with me.

Mr. Chairman: Thank you very much.

Tomorrow, in the morning, Ray will be bringing an update on the Ontario Securities Commission. In the afternoon, it will be a briefing with the



research officer on the Environmental Assessment Board. It will be in camera tomorrow. Are there any questions with the agenda? We stand adjourned until tomorrow at 10 a.m.

The committee adjourned at 3:40 p.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:

ONTARIO FRENCH LANGUAGE SERVICES COMMISSION

EXAMEN D'ORGANISME :

COMMISSION DES SERVICES EN FRANCAIS DE L'ONTARIO

WEDNESDAY, MARCH 22, 1989

Morning Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

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VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Martel, Shelley (Sudbury East NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Jackson, Cameron (Burlington South PC) for Mr. Runciman

Pelissero, Harry E. (Lincoln L) for Mr. Ballinger

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mrs. Marland

Clerk: Deller, Deborah

Staff:

Smith, Cynthia M., Chief, Legislative Research Service

Witnesses/Témoins :

From the Ontario French Language Services Commission:

Raymond, Gérard, Chairman

Shenstone, Mary, Executive Assistant and Program Analyst

From the Office of Francophone Affairs:

Beauregard, Rémy M., Executive Director

De la Commission des services en français de l'Ontario :

Raymond, Gérard, président



STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, March 22, 1989

The committee met at 10:04 a.m. in room 151.

AGENCY REVIEW: ONTARIO FRENCH LANGUAGE SERVICES COMMISSION

EXAMEN D'ORGANISME : COMMISSION DES SERVICES EN FRANCAIS DE L'ONTARIO

Mr. Chairman: I will call the meeting to order. For those of you who are not aware, this is the standing committee on government agencies. We review different agencies, boards and commissions. We have reviewed several over the last year and today we are dealing with the Ontario French Language Services Commission.

Before we get into hearing from the chairman, Cynthia Smith would like to relate some concerns she would like to bring forward to us with regard to our report, which we have already had.

Ms. Smith: They are refreshers, not concerns. You have on the desk before you the second draft, dated March 6, of the Ontario French Language Services Commission Agency Review prepared by Ray McLellan of this office. Mr. McLellan presented that report and it was discussed on February 8. I bring to your attention two quite small changes in the draft you have in front of you. On page 8, there is one change in the personnel of the board of the commission. The name of Jean-François Aubé is replaced by that of Marcel-André Sauvé. That is on the copy you have in front of you. On page 13 of the report, in the paragraph in "Estimates" beginning, "The remuneration for board members," the second sentence is, "The chairman's position is currently classified at the Deputy Minister level." Before that there was a numeric classification. Those are both minor, but important facts.

For purposes of refreshment and future discussion, I draw your attention to page 10, "Current Agenda." You might want to look at that while preparing your questions for the witness this morning. "In the third and final year the commission will finalize its program before its responsibilities are fully assumed by the Office of Francophone Affairs. The committee's agenda for the 1988-89 period includes the following items as set out in the most recent annual report:

"To ensure that government services are in place to meet the needs of the French-speaking population under the act;

"To concentrate on certain key issues such as the recruitment of bilingual personnel, language training and law enforcement;

"To monitor the implementation of French-language services within the various ministries to ensure that information is made available to the public, and that French-language services are actively promoted;

"To encourage members of the French-speaking community to become involved in the administration of government-funded agencies to ensure that their community is adequately represented;

"To examine the question of updating various ministries' plans and, if

necessary, make recommendations for their improvement;

"To fulfil its responsibilities with regard to the designation of public service agencies; and

"To deal with possible exemptions to the act but expects that these will be rare."

There is probably no need to remind you of page 11, "The commission has reached several conclusions during its tenure, as set out in the Annual Report (1987-1988)," but you might wish to look at these conclusions and also the next section, on budget and finance, which is on pages 11 through to 13.

Mr. Chairman: Gérard Raymond, you are the chairman. Perhaps you would introduce yourself, your position and who you have with you. I understand you have a presentation that you would like to make.

Mr. Raymond: A brief presentation. Indeed, my name is Gérard Raymond. I am chairman of the Ontario French Language Services Commission. I have with me this morning Rémy Beauregard, who is the executive director of the Office of Francophone Affairs, as well as staff of the commission and the office.

Since the commission was created through the passage of the French Language Services Act, it might be appropriate to begin this presentation by giving a brief overview of the act. On November 18, 1986, the Ontario government, with the unanimous support of all three parties, passed the French Language Services Act. This act, better known as Bill 8, acknowledges the long-standing contribution of Franco-Ontarians to this province. It also recognizes the need to preserve the linguistic and cultural heritage of the province's French-speaking population.

It ensures that francophone residents can enjoy equal access to and receive equal treatment from the provincial government in their own language. The act provides that, as of November 19, 1989, French-speaking citizens of Ontario will be able to receive provincial government services in French in designated areas of the province.

La Commission, qui a été créée au moment de l'adoption de la loi, relève du ministre délégué aux affaires francophones, l'honorable Bernard Grandmaître. Elle est composée d'un président à temps plein et de quatre membres à temps partiel, choisis à l'extérieur de la fonction publique. Malheureusement, tel que vient de l'indiquer la recherchiste, un des membres de la Commission, M<sup>e</sup> Jean-François Aubé de Timmins, est décédé l'automne dernier. M. Marcel-André Sauvé, de North Bay, lui a succédé et celui-ci complètera le mandat de M<sup>e</sup> Aubé. Le directeur général de l'Office des affaires francophones est membre d'office de la Commission.

The commission's principal function is to advise and assist the government of Ontario in the effective implementation of the French Language Services Act. The mandate of the commission is set out in the act. In specific terms, the commission may review the availability and quality of French-language services and make recommendations for their improvement; recommend the designation of public service agencies, make recommendations regarding the addition of designated areas and require nonprofit corporations and similar entities, psychiatric and residential facilities administered by ministries and colleges of applied arts and technology to provide to the commission information that may be relevant in the formulation of



recommendations with respect to their designation as public service agencies. It may also recommend changes in the plans of government ministries and agencies for the provision of French-language services and make recommendations regarding proposed exemptions of French-language services.

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The commission's three-year mandate will expire in less than eight months, when the legislative guarantees of the act come into force. At that time, its functions will be assumed by the Office of Francophone Affairs. The commission met for the first time in early January 1987 and has met on a regular basis for two or three days a month since then.

During the first year of the commission's mandate, the process for the preparation of ministry implementation plans was developed. An implementation procedures manual was distributed to ministries to assist them and their directly funded agencies in the preparation of their plans and the development of procedures. Such an approach ensured government-wide consistency in the corporate planning of French-language services.

Plans were developed by each ministry for its services and those of its schedule I, II and III agencies. These were then submitted to the commission and the Office of Francophone Affairs for analysis and subsequent discussion at a joint presentation given by each deputy minister or his representative.

Au cours de la première année des trois années de la mise en oeuvre, la commission a également pris connaissance des besoins de la communauté francophone. Elle a identifié quatre secteurs clés de services en français, auxquels elle allait accorder la priorité pendant toute la durée de son mandat. Les principes directeurs de la commission reflètent d'ailleurs ces priorités.

La Loi de 1986 sur les services en français prévoit la désignation, par règlement, d'organismes offrant des services publics connus généralement sous le nom d'organismes bénéficiaires de paiements de transfert. Bon nombre de ces organismes, comme les hôpitaux et les sociétés d'aide à l'enfance, offrent des services jugés essentiels par leurs utilisateurs.

Afin de s'assurer que les organismes soient en mesure de répondre aux besoins de la population francophone, la commission a établi cinq conditions qui doivent être satisfaites avant qu'elle ne recommande la désignation d'un organisme bénéficiaire de paiements de transfert. Ces conditions ont été annoncées par le ministre, l'honorable Bernard Grandmaître, en juin 1987.

Toujours pendant la première année de son mandat, la commission, ayant identifié les services juridiques parmi ses priorités, a étudié ceux offerts en français dans certaines localités du Nord de l'Ontario.

In short, year one of implementation was devoted to setting the corporate foundation for the effective delivery of services.

As implementation plans, by their very nature, are in constant evolution, ministry procedures and proposals continued to be fine-tuned over the course of year two, with the assistance of both the Office of Francophone Affairs and the commission. Corrections and adjustments to implementation plans were requested from ministry French-language services co-ordinators. Ongoing discussions were held with ministry staff to identify remaining gaps in the delivery of French-language services and to make recommendations on how

these could be remedied.

Dans le cadre de son mandat, la commission a également amorcé plusieurs études sur la disponibilité et la qualité des services en français. En collaboration avec les organismes concernés, la commission a revu les services offerts par TVOntario, le ministère de la Formation professionnelle et le Collège de technologie agricole d'Alfred. Les résultats de ces études ont été communiqués aux ministères concernés, afin qu'ils en tiennent compte lors de la planification et de l'élaboration des politiques et des services.

La commission a également étudié les services sociaux et de santé offerts en français et financés par le gouvernement provincial, mais administrés par certaines municipalités dans les régions désignées de la province.

A Sudbury, la Commission a retenu les services d'un expert-conseil, afin d'évaluer la prestation des services en français dans cette région. Les travaux de l'expert-conseil ont reçu l'appui et l'entière collaboration d'un groupe communautaire francophone.

Over the course of the year, the Ontario French Language Services Commission continued to work closely with the Office of Francophone Affairs to address and resolve several corporate issues important to the effective implementation of the act. Procedures for the designation of transfer payment agencies, the designation of multiple offices and requests for exemptions were established and communicated to ministries. Guidelines on the use of French in administrative tribunals, law enforcement activities, official publications and in tenders for goods and services were also developed.

Year two, therefore, consisted of building a framework capable of supporting the long-term provision of French-language services. Year three, which we have now entered, will be crucial, as it is during this period that the final elements of implementation will be put into place. Indeed, over the course of the next few months, the commission will complete its final review of all implementation plans. Approval will be granted once the commission is satisfied that a ministry's intentions, as described in its original and revised implementation plan, will meet both the spirit and the letter of the act.

Where a ministry feels it will not be able to provide all of its services by the November deadline due to clearly unavoidable circumstances, it will need to prepare a detailed plan for compliance with the act within a specific and limited time frame. In some cases, however, an exemption may be required. Although exemptions are permitted under the act where they are reasonable, necessary and do not derogate from its general purpose and intent, the commission will not be receptive to numerous requests for such exemptions. Indeed, it expects them to be extremely rare.

Après avoir revu les plans de mise en oeuvre et de conformité, la Commission se consacrera à la désignation des organismes bénéficiaires de paiements de transfert. Elle étudiera les plans quinquennaux de désignation qu'élaborent présentement les ministères concernés. Elle incitera également les ministères à demander la désignation anticipée des organismes qui desservent déjà adéquatement la population francophone.

Toutefois, on ne doit pas oublier que la désignation des organismes offrant des services publics est une entreprise à long terme et très complexe, qui ne sera pas terminée avant la fin du mandat de la Commission. Cette



démarche s'échelonnera sans doute sur une période de temps plus longue.

Throughout this final year of implementation, the commission will follow closely the communications activities relating to French-language services. The commission believes that the proactive delivery of services is an essential component of both their use and effectiveness. The Office of Francophone Affairs and ministries are currently developing communications plans, both corporate and individual, to promote their services. Clearly, the commission will take particular interest in all such initiatives.

Over the eight months remaining in the commission's mandate, it will continue to work closely with the government's institutions in their efforts to implement the French Language Services Act. In short, it will review and approve final implementation plans, requests for exemptions and proposals for designation of ministry offices and agencies. It will also work with ministries and the Office of Francophone Affairs to promote the development of proactive communication strategies.

Mr. Chairman, that concludes my presentation on the operations of the Ontario French Language Services Commission. We have brought with us this morning two brief video clips we could show, if it is of interest to you and the members of your committee. They would merely expand on the activities of both the commission and the Office of Francophone Affairs. We have them readily available if you like to see them.

Mr. Chairman: Thank you. I believe it would be the wish of the committee to look at the video at this time.

[Video presentation]

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Mr. Chairman: Do you have anything further you would like to present to the committee?

Mr. Raymond: No, Mr. Chairman. We will gladly answer questions, if that is your wish.

Mr. Chairman: Thank you very much. That will be the procedure we will take now. Mr. Nixon.

Mr. J. B. Nixon: Thank you. Bonjour, monsieur Beauregard et monsieur Raymond. C'est un grand plaisir de vous avoir ici aujourd'hui. J'ai des questions pour M. Raymond.

My first question is, when were the members of the commission first appointed?

Mr. Raymond: That is before my time, but I suspect it would go back to the fall of 1986. Here is a copy of the order in council, as a matter of fact, November 26, 1986.

Mr. J. B. Nixon: That would be after passage of Bill 8, I take it?

Mr. Raymond: Yes. To the best of my knowledge, the bill received royal assent the day it was passed on third reading and that was November 18, 1986.

Mr. J. B. Nixon: So the commission was not involved in the construction and development of Bill 8.

Mr. Raymond: No. That is a fair statement to make, I would suggest.

Mr. J. B. Nixon: Earlier this week, we had before us in an in camera session Robert Macaulay, who was appointed by the Chairman of Management Board (Mr. Elston) to review some 800, I think, agencies, boards and commissions operating under the authority of the government of Ontario.

Mr. Raymond: Correct.

Mr. J. B. Nixon: He made the comment that in his view those agencies, boards and commissions could be divided into three types. There are probably 80 or 90 that are regulatory commissions, like the Ontario Energy Board and the Ontario Securities Commission. He made the comment that there are probably several hundred that are considered operational boards and commissions that have as their responsibility to manage assets or programs. I think of the St. Lawrence Parks Commission and Ontario Place Corp.

He commented that there is a third category that is purely advisory in the order of the Advisory Council on Occupational Health and Occupational Safety to the Minister of Labour. It is my sense, and I just want to know if you agree, that your commission falls into that third category, that it is an advisory commission that advises a particular minister and the government. Is that correct?

Mr. Raymond: That is correct. We are accountable to the minister responsible for francophone affairs (Mr. Grandmaître).

There are a couple of little qualifiers that I think it would be helpful to add. Number one is that we are charged with the responsibility of producing an annual report and that annual report is tabled in the Legislature directly. I forward the report directly to the Speaker. The other qualifier I would add is that the commission may, if it so wishes, under certain circumstances make public the plan of a ministry should it be the decision of the commission that the plan is not acceptable.

But you are right in saying that the role of the commission is purely advisory to the government.

Mr. J. B. Nixon: When you make a decision that a plan may not be acceptable, do you measure that against the tests set out in Bill 8 and the goals espoused by that legislation?

Mr. Raymond: That is right. The members of the commission have adopted a number of guiding principles, both for outside agencies and for ministries, and we judge the quality of the plan against those guiding principles. As well, we place a great deal of emphasis on the fact that in my personal opinion and in the opinion of the members of the commission the plans should be service-driven. In other words, what services need to be provided and what measures have been adopted to ensure that those services are available? That is basically the test we put a plan to before we adopt it or approve it.

Mr. J. B. Nixon: Those are the two guiding principles.

Mr. Raymond: We have adopted some 11 guiding principles, and they go



from the fact that the act implies a right to the service; it is not merely a privilege any more. We put some emphasis on the quality of the service, the equivalency of the service, the permanency of the service, the access and the availability, the universality of the service, the governance, the proactive delivery, the accountability and the fiscal responsibility. Those are the guiding principles we have adopted as a body.

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Mr. J. B. Nixon: If you make a determination that a plan may not be acceptable, I take it you will report that to the minister responsible for francophone affairs. Is that correct?

Mr. Raymond: Yes, there are ongoing discussions. We have also signed a memorandum of agreement with the office. The system that is in place now for the approval of the plan is that the deputy minister forwards the plan from his or her ministry to the Office of Francophone Affairs, and then discussions take place between the office and the line ministry. Rémy and I have met on numerous occasions with a number of deputy ministers. We bring about changes before the plan is ever tabled at a commission meeting.

The plans are indeed in evolution and they have been greatly improved in my opinion over the last couple of years. We are just now in the process of adopting the final plans as submitted and as amended by the ministries.

Mr. J. B. Nixon: But it is the deputy minister who has the responsibility for implementation of Bill 8.

Mr. Raymond: That is a very important point because it says in the act, "Each deputy minister is accountable to the executive council for the implementation of this act and the quality of the French-language services in the ministry."

Mr. J. B. Nixon: Just to go over the point, the commission advises, the deputy is responsible for implementing and in a sense it is the minister reporting to the executive council or cabinet who is the person who ultimately determines whether or not the implementation by a deputy is appropriate or inappropriate.

Mr. Raymond: I think that is a fair statement.

Mr. J. B. Nixon: As I understand it, and I think it is fairly well known, the commission's mandate is a temporal mandate, a three-year mandate.

Mr. Raymond: Right.

Mr. J. B. Nixon: It expires in November 1989. None the less, I imagine that the implementation of Bill 8 will not terminate in November. There will be adjustments being made and programs being changed or developed as time goes by, as needs arise. Can you comment on how that implementation will occur in the absence of the commission?

Mr. Raymond: Technically speaking, all the responsibilities of the commission, come November 18, 1989, will be assumed by the Office of Francophone Affairs. I am convinced there will remain a number of activities that will need to be either monitored or implemented, as a matter of fact.

There will be few exemptions, I am sure, because the commission is not

going to be very receptive to numerous requests for exemptions. But there will be compliance plans under some strict circumstances or conditions where a ministry, for instance, has begun the implementation of a long-term activity that will not have been finished by November 18, 1989, and will go on beyond that point in time. Then somebody will need to monitor the successful implementation of the latter phases of that activity.

There will be the designation of agencies. That will be, in my opinion, the main activity after November 18, because ministries are now in the process of preparing a five-year plan for the implementation of their transfer payment agencies. That will be crucial to the successful implementation of the act.

To come back to your question, technically speaking, all of the responsibilities of the commission will be assumed by the office. But I think it is fair to say that the members of the commission have already started to examine in a very preliminary way what could take place after November 18, with a view to providing advice to Mr. Grandmaitre who is responsible for francophone affairs across the government.

Mr. J. B. Nixon: You mentioned something I think it might be important to elaborate on briefly. You are appointed by order in council to chair the commission, which is an advisory commission to the minister, whereas Mr. Beauregard is, not to put too blunt a point on it, a civil servant employed within the office of the minister responsible for francophone affairs.

Mr. Raymond: That is correct. There is a minor distinction in my personal situation. I am a career civil servant and I have played a dual role. While I was appointed as chairman of the Ontario French Language Services Commission by order in council, I am also a civil servant.

Mr. J. B. Nixon: Essentially, the role the commission has played in advising the minister in the early stages of the implementation of Bill 8 will be transferred over to Mr. Beauregard's office upon the termination of the commission in November.

Mr. Raymond: That is correct.

Mr. J. B. Nixon: I may come back with further questions.

Mr. Breaugh: I guess one of the things that will be a little difficult for us is that we are not really here to review the French Language Services Act itself or the work of all the ministries and what might be done in that regard, but to look at the commission itself as an advisory agency.

I suppose the most pertinent question is, is there any rationale for extending the life of the commission itself past what would normally happen this November, which is simply that the commission as an advisory group will go out of business? I want to explore that a little because, not to be too delicate about it, the theory is that we have an advisory group now, operating as a cross-section of Ontario, providing advice to the minister on how to provide French-language services. As you have just pointed out, many of these folks just happen to be those who either now work for other ministries or may be in line, so to speak, to become part of the permanent civil service doing this exact same job.

What may happen in November is that the advisory committee we now have representing the population at large becomes full-tilt civil service. Is there



any truth to that thought? Will the commission in fact become permanent civil service after November?

Mr. Raymond: From a purely technical and legislative point of view, the commission is disbanded automatically come November 18, 1989. The act stipulates that all the responsibilities of the commission are automatically transferred to the Office of Francophone Affairs. In that sense, all the members of the Office of Francophone Affairs are civil servants in the traditional sense of the words.

In response to both your question and Mr. Nixon's question, what takes place beyond November 1989 is a little premature for me to stipulate, but I think I can go as far as saying that the government could well be well served by retaining some external advisory capacity, whatever form that may take.

Mr. Breaugh: Okay. That is the part I want to explore a little then. I want to put on the record that at least in my opinion, there is quite a distinction to be made between an advisory group of citizens at large who are brought in to tell a government what is good and what is bad about what it is doing and those exact same human beings who receive their paycheque directly from the government and are employed directly as civil servants within a ministry.

I suppose it happens somewhere around here, but I do not recall in the time I have been here that a civil servant stands before a minister of the crown and says, "You're wrong." Most of them somehow seem to find a way that the minister is actually right. They may need a little help in reaching that conclusion, but there are not too many civil servants who tell a minister of the crown that he has made a big mistake, that he is stupid, that what he is doing is wrong, pig-headed, and he should not do that.

I just want to explore for a moment whether there is real value in keeping the commission in place. This is difficult for me because I do not see the commission as being really a neutral, third-party group of folks brought in to advise the government. To be honest about it, and there is nothing wrong with it, the people on the commission are really advocates for francophone rights in Ontario and they should be. They are exploring how you can reasonably and rationally provide services in the French language. That is their goal. That is their mandate. That is what they are trying to do. While they are not quite at arm's length, they are a step outside the normal civil service procedure and I kind of like that idea.

Are there occasions now when you see a role for somebody other than part of the civil service group to provide a place for people in Ontario to say: "Wait a minute. I'm not real happy with what the government's doing now"? Otherwise, where would a francophone group in a nondesignated area, for example, go after next November if it is not happy with the provision of French-language services in its area?

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Mr. Raymond: There is a wide network of community-based organizations out there that interface with the Office of Francophone Affairs on a regular basis, right from l'Association canadienne-française de l'Ontario, the provincial organization, to the regional chapters of ACFO.

The more specific question you raised is, beyond November 18, 1989, should there be some advisory body made up mainly of outside members that

should be maintained? I wish I could give you the official position of the commission. As a matter of fact, I can share with you the fact that this is on our agenda for the next meeting. We are now looking down the road. We are eight months away from November 18, 1989, and we want to provide advice both to the minister responsible for francophone affairs and to the government as to what measures or what modus operandi should be in place beyond November 18.

I shared with you earlier that I think the government would be well served by maintaining some outside presence on whatever body it may wish to establish.

Mr. Breaugh: Let me pursue that a bit. I watched your videos and I was impressed, but I am easily impressed early in the morning.

To say that someone has a legal right for services in the French language is a noble thing, and I know that is why we as a Legislature pass laws, but it is of damned little use to somebody who needs the services tomorrow morning. If they are prepared to get a lawyer and go to court and argue it out for four or five years, they may or may not win.

For practical purposes, I think Ontario has tried to see that we are a little more pragmatic than that. We are trying to find out where francophones live, what kind of services they need and how we can provide those services to them. We have not yet embarked on a lot of court procedures, though we will.

I am concerned somewhat that after the three-year, breaking-in period we abandon the approach of trying to find a reasonable consensus way to do this and say, "Okay, from now on if you have a problem with this law, go see the civil servants." I know what the answer to that will be—a not particularly warm reception found there. The other alternative is to go to court, not a very practical alternative, again.

I am concerned somewhat if we move to the point where we say we will stop the use of an advisory commission to try to work these problems out and say, "Turn to your civil servants." No civil servant worth his or her salt makes decisions on his own. They interpret the guidelines laid down by somebody else. They have to be really stupid to start making decisions about whether we should or should not do this. That really is not their job. They are not in place to make those political decisions.

The options other than the use of a commission, to my mind, are not very practical. How much of what the commission does now is that pragmatic process, considering how we can work our way through this and interpreting the law so that it makes sense to the population we are trying to serve? How much interface do you have with the general population?

Mr. Raymond: We have gone out of our way, really, to maintain a good rapport with the general population. I for one have addressed a number of community-based groups right across the province and I know the members of the commission do as well.

I think there is one additional point I would make in response to your earlier question. When you refer to the office as a ministry, it is a ministry in the sense of a central agency more than a line ministry. The office is really the infrastructure to support the minister responsible for francophone affairs. The responsibilities of both the office and the minister are outlined



in the act. Under clause 12(2)(d) the minister may "investigate and respond to public complaints respecting the provision of French-language services."

There is already in place within the office—and Rémy would be in a better position than I to tell you about how the system works at the present time and what refinements may come about in the near future—a complaints mechanism where an individual citizen, short of the provisions of the act being in place, can indeed file a complaint directly with the ministry, with the minister responsible for francophone affairs or with the office. As a matter of fact, we at the commission have received not numerous complaints but some complaints that we have referred to the office. The office then undertakes to conduct an investigation and respond to the complainants. That is the mechanism as it is; so there is already in place this procedure for filing a complaint with the government.

I think it is important—and I am repeating myself—to make a distinction between a line ministry and a central agency, which the office really is.

Mr. Breaugh: We never have any problems about filing complaints around here. That is not the difficulty at all. Doing something about it is the difficulty. Receiving complaints is easy; trying to resolve the problems is where we run into the problem.

Let me pursue a couple of other things and then I will leave you alone for a while.

Part of what I perceive to be where we are at with all of this is that we have gone through the nice phase of the provision of French-language services. We saw this morning in the videotape our wonderful Premier (Mr. Peterson) himself saying that we are really doing good things here. As a commission, you have gone out to the francophone groups in Ontario and said, "We are doing good things here." The francophone groups have all said, "Boy, that's nice," in two official languages.

But we have not quite got to the full implementation stage. I get a few complaints in my office now about things being done in the French language, but I know that sooner or later it is going to hit the south end of my riding where there are not a whole lot of francophones and where there may actually be one or two people who will take exception to that. We have not begun to fully implement French-language services. We have just begun the process a bit.

We have done the nice part and, I may so categorize it, the easy part. We are about to embark on the more difficult part, where the services that are a theoretical right become a real right, where we anticipate that we will actually try to implement the French Language Services Act. It seems to me we are at a point where we need a commission more than we have needed it for the last two or three years, and yet oddly enough it is at this time that the commission will cease to exist.

Do you share any of those kinds of concerns: that we have gone through the initial phase, and now at the point where we are actually going to start to implement what could be a very difficult piece of business, the advisory committee that we have relied on up until now will not be around any more?

Mr. Raymond: I share the point of view that beyond November 18, 1989, the work will not be finished. I alluded earlier to compliance plans that are being filed with the office and approved by the commission, whereby

ministries commit to implementing the remaining phases of their program where they were not able to meet the full intent of the act prior to November 18, 1989.

On the human resources side, as it was clearly indicated in the film clip that we saw, positions can only be designated if they are presently filled by a bilingual incumbent or the position is vacant. Some of those positions, therefore, will not be filled until well after November 18, 1989. That, too, will require some monitoring on the part of the office and whatever other mechanisms might be retained. Therefore, I do share the point of view that the work will not stop.

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I was not around at the time the act was passed, but it seems to me that the crucial phase was surely the development of plans, corporate plans and ministerial plans, to bring about the changes that were required in the provision of services. I do not know that at the time the act was adopted it was considered necessary to look beyond November 18, 1989. I think the time has come and I am glad to see that the committee, in line with what Mr. Nixon and you have been saying, will take a look at what measures might be necessary beyond November 18, because we at the commission will provide our own advice to the minister on this subject.

Mr. Breaugh: One final thing and then I will leave you alone for a while. I note that much of your work now has gone into the area of things that are outside the direct realm of the particular ministry into other agencies, into other nonprofit groups, into municipalities, things of that nature. Could you give us a little bit of an assessment of how smoothly things are going in that area?

Mr. Raymond: To pick up on your last point, municipalities, I think it is important to indicate clearly, because there is this misconception around, that municipalities do not fall within the realm of this act. I think that is a misunderstanding that is making the rounds in a sort of way.

On transfer payment agencies, it will be a mammoth undertaking, and Rémy is fully aware, as I am and as the members of the commission and as deputies are, because we are looking at hundreds, if not thousands, of agencies that provide services to French-language individuals in communities that, in my opinion, will be crucial to the successful implementation of the act if both the spirit and the letter of the act are to be met.

There is under way at the present time within each ministry a five-year plan. They are to file their plan with the office and in turn to seek the commission's approval.

The members of the commission are of the view that there are a number of community organizations that are already equipped to provide services in French, and we would encourage ministries to designate or to seek designation for those agencies at the earliest possible date.

But in fairness to the ministries and to the francophone community of this province, I think it needs to be said and it needs to be repeated that come November 18, 1989, not all those agencies will be designated. That will be over a period of years. As a matter of fact, the ministries are working on



a five-year plan. In the sense that the five-year plans are being developed at this moment, the system is working fairly smoothly.

Mr. Breaugh: I have lots more things I would like to talk to you about, but I will yield the floor to other members.

M. Villeneuve: Je vous souhaite la bienvenue, messieurs Raymond et Beauregard, à notre comité. Je vais vous expliquer un petit peu certaines situations qui semblent précaires et diviseuses dans la mise sur pied du projet de loi 8.

I will question in English, if you do not mind, just to make sure that everyone understands.

First of all, I represent a riding that has both designated areas and nondesignated areas in it, and there is a grey area somewhere between the designated and nondesignated areas. I realize that you were part and parcel of the group that was mandated to bring ministries together towards the implementation of Bill 8 and to make sure that, really, everyone got fair and equitable use of this bill.

Within the ministries, did they come to you with their plan or did you suggest to them, "This is what the French Language Services Act is all about and this is the way you implement it"? Which came first? I would have liked to have seen some hearings on this initially, but it did not happen, and therefore your task was that much more difficult because you had to lay out the ground rules, the parameters and what have you. How did it initially take place after Bill 8 was passed by the Legislature of Ontario?

Mr. Raymond: With your permission, Mr. Chairman and Mr. Villeneuve, I think we could turn to Mr. Beauregard to answer that question. The two videos that you saw this morning are an indication of the outreach thrust that took place early after the passing of Bill 8.

I think there was a framework agreed to. We referred to this FLIP binder, and you may have seen it, the French-language implementation plan, which was prepared by the Office of Francophone Affairs in consultation and in conjunction with the commission. You have got your own copy, I see. That really provided the framework.

Did the commission and the office go out to ministries or did the ministries come in? I think the answer is merely that this provided the framework and then the onus was on individual ministries to formulate their own plans and submit them to the office for analysis and to the commission for approval. Mr. Beauregard, you may want to embellish on what I have said.

Mr. Beauregard: The implementation procedure was prepared by the Office of Francophone Affairs in consultation with ministries. We had representatives from a few ministries sit down with us and prepare the procedure, just to ensure that the procedure would be applicable when it came down to the ministries. There was no use preparing something the ministries could not use.

This is the framework with some guidelines. What we wanted to achieve, because we had three years to implement the act, a very short time, was to make sure that on the same subject—for example, the translation of publications or signage or the designation of positions—ministries would

generally follow the same type of rules, so that we would have a rational way of doing it everywhere at the same time.

We prepared the procedure, we met with the deputy ministers, they gave us some feedback and it was issued in February following the adoption of the act, four months after the act was passed. The ministries prepared their plans accordingly, following the general set of principles and rules and using our form, so that we could evaluate and study the plans according to a system. They came and presented their plans to a joint meeting with the Office of Francophone Affairs and the commission. The deputy minister came with his staff and said, "This is my plan. This is what I want to do in my ministry," and from that moment on there has been a continuous dialogue and exchange of views with the ministries.

There was this particular meeting where we gave feedback to the ministries on their plans. We told them what we thought were perhaps some of the things that could be reviewed. We discussed the particular issues that each ministry had, because dealing with 27 ministries and five secretariats, and with some ministries covering 250 agencies, because the ministry agencies come under the act—and some agencies are bigger than ministries; when we deal with Ontario Hydro, we are talking about an organization that is bigger than most ministries—we had to make sure that this dialogue would exist between the office and the ministry or the agency.

After these discussions and ongoing dialogue with us and with their own staff, the ministries went back to their staff using the video, using the procedure to prepare the plan as closely as possible to where the services are delivered. We insisted on that very much. If you are going to deliver services in the New Liskeard area, make sure that you talk to your staff in that particular area. Talk to your local manager to find out how he or she would like to go about it.

Ministries prepared corrections to their plans and came back to us with suggestions and amendments. As the chairman of the commission mentioned, we are in the process right now of finalizing at the commission the adoption of ministry plans. So it has not been a process that took place at one time and that was it; it is a continuous process. In some cases with some ministries, regarding compliance plans, this process will keep on going.

There was within ministries a communication activity around the implementation of the act using the videos, the implementation manual, of which 5,000 copies were prepared for managers which they could use at their levels, and background information that was given to ministry staff on the act, on the French-language community which they had to serve and on whatever questions needed to be answered so that the plans could be prepared.

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Mr. Villeneuve: So you were acting basically as a monitoring agency and also as a leadership type of body to provide some input where you ran into snags.

Mr. Beauregard: The key word would be co-ordination.

Mr. Villeneuve: The problem I have is, again, back in those areas where the line is between a designated area and a nondesignated area. We seem to have limited problems where it is an entirely francophone area, such as the Ottawa-Carleton area or the Prescott and Russell area, or an entirely



anglophone area, of which we have many throughout Ontario. But in that grey area where the designation is discontinued and we fall into what is normally considered insufficient numbers of French-speaking people to provide services, can you tell us what is in place here regarding the designation of positions when we get into those very delicate areas?

I know you have different skill levels—elementary, intermediate and what have you. There is the designation of positions, particularly when someone is in that position. I realize the statement was made that no one would lose his job until the position became vacant for whatever reason, but we have a problem here.

There has been a lot of speculation, if nothing else, and a lot of talk about persons not being hired because of a lack of proficiency. I even heard it from what I would consider to be French-speaking people who have told me that they felt they were quite qualified linguistically and otherwise, but because of the lack of linguistic ability—and I would consider them to be French-speaking people—they were not given the position.

I am just wondering how you designate a position at an elementary, intermediate or an advanced level. How do you decide whether the person who is in that position, if someone happens to be in that position, qualifies?

Mr. Beauregard: Of the four levels that we have identified, there are two levels that we consider as the working levels. The superior level is the level where you would expect someone to be able to write original material in French. There is a superior knowledge of the written language that is necessary. Most positions that have been designated are the advanced level where people need to converse with French-language clients or can read or answer forms—that type of relationship. These are the two levels.

I must say that the levels are not necessarily clear-cut. Somebody at the superior part of the intermediate level is probably at the bottom of the advanced level. So the people doing the evaluation, where the evaluation is necessary, have tools in order to identify whether the person has the level that is required.

The levels were decided by the ministries. Each ministry, in reviewing the number of positions that were needed to provide the service, identified through the job requirement what needed to be done by that particular employee and decided whether it would be a superior or advanced level. As I have said, in cases where original material has to be written in French, a superior level is usually required.

When the act came into force in the designated areas in eastern and northeastern Ontario, we estimated that the number of designated positions that were already filled by bilingual incumbents was higher than 60 per cent. That was in the designated areas in eastern and northeastern Ontario. In the other regions, the percentage varied. But we made it clear at the time that a designated position would become designated when it became vacant and filled by an incumbent having the required language capabilities.

If the position is filled by someone who does not have the language capabilities, the position is slated for designation at a later date. Ministries review the positions that become vacant in their ministries and make sure that as positions become vacant because of voluntary exit opportunities or normal turnover, they decide whether a position is going to be designated in that particular office or area because the need for the service is there.

Where staff existed in positions providing services in French, there was no need for evaluation. The evaluation is needed only in those situations where the ministry's personnel branch is not sure of the linguistic capability of the candidate. In most cases where an interview is held for a designated position, there is usually one member of the board who is capable of holding part of the interview in French with the candidates so that at that time it can assess the linguistic capability of the candidate. If you have a candidate who studied at l'ecole secondaire La Citadelle until grade 13 and went into the French-language program at a community college in the French-language stream, then obviously we would know this person has the linguistic capability you require.

The evaluation is when the ministry is unsure. I am sympathetic to the fact that there may have been situations where this rule was not followed totally and these cases were brought forward to the office. We talked to the French-language training centre to make sure the evaluation would be fair.

As you know, these positions requiring linguistic capabilities are open to people who are either francophone or anglophone. With 100,000 anglophones coming out of grade 13 in immersion programs, more and more English-speaking Ontarians with the capability in both languages access these position. As a matter of fact, within our office we have a number of English-speaking Ontarians who are bilingual who hold positions where both languages are required.

On your other question about the grey areas, there are certain ministry offices that serve a designated area but are not in a designated area. The act makes it clear that an office serving a designated area but not in a designated area must provide services in French. We have worked with the ministry to ensure that offices providing services in French would, inasmuch as it is physically possible, be in designated areas so we would not have to use offices outside designated areas unless we have no other choice.

I am thinking of eastern Ontario, which it seems for some ministries goes from the Don Valley Parkway to Prescott and Russell. If there is one regional office for that whole area, obviously it can be anywhere from the Don Valley to Prescott and Russell. It may be in Belleville, Kingston or it could be in Hawkesbury. If it is outside a designated area, the ministry has to ensure that this regional office, if it serves clients in the designated area of eastern Ontario, has to provide services in French.

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Mr. Villeneuve: Could I pursue that a bit? We will use a couple of examples, if you do not mind. Example A is an Ontario Hydro office situated in a town that is not designated but goes out into an area that is partly designated, partly nondesignated. Example B is a hospital, same situation. What would the guidelines be? I realize that we are all aware, but for the record, how would you interpret that? What would be the designated positions, say, at the Hydro office or in that hospital?

Mr. Beauregard: The rule of thumb to designate a position is whether the person holding that position is in contact with the public. For example, if the person is on the 24-hour telephone line at Ontario Hydro, obviously this is a position in contact with the public, because anybody who sees a tree that has fallen on the hydro lines or has a power failure will call that number, and 24 hours a day, seven days a week somebody is on the line to note the situation and correct it.



To ensure that we would be reasonable in those situations, we have made sure and we have ensured with ministries that the rule would apply to staff who are in contact with the public. Some ministries, because of the way they are organized, can use telephone communication to divert calls to a designated area or to an office that has the required capability, but that varies from one ministry to another and from one organization to another. For example, the new telecommunications system that will be in place with the Ontario Provincial Police will help the OPP greatly in pooling and transferring calls instantaneously if a person requests a service in French.

The rule is to make sure that the position that is in contact with the public serves the public if there is no other way of providing the service. If it can be diverted to another office rapidly, if it can be a reorganized ministry, I have done so.

Mr. Villeneuve: We speak again of the example used: A lineman with Hydro would not have any linguistic requirements; a public relations person with Hydro would.

Transfer that to a hospital. I can appreciate where the admitting room would probably require someone who can speak both languages. How would this apply to, say, a nurse? I realize that in the operating room it should not make a lot of difference.

Mr. Beauregard: We have worked with some hospitals in trying to identify how the hospitals could be organized in such a way to provide the basic services that are needed. In designated areas, in northeastern Ontario, in your area of eastern Ontario, we found out generally that there are already on staff of institutions, such as the general hospital, a certain number of professionals or staff who have linguistic capability. If you are in a municipality where 45 per cent of the population is French-speaking, probably the staff of that institution will reflect the community.

It is a matter of how you decide to organize your staff, to make sure that at all times during working hours you have the capability to respond to patients who may have a need for French-language services. You will know and understand that those are often very stressing situations. Somebody comes out of an operating room and goes into the receiving room and does not know what is happening, and obviously would refer to his natural language to try to communicate; and if the communication does not happen, the stressing situation will probably increase.

It is a matter for institutions to plan their services and to plan the organization of services in a manner to be responsive. They know their clients; they know their client base. From that, I think it is possible to plan services in such a way as not to disrupt services but also to provide a quality of service.

Mr. Villeneuve: A final question for now, and it relates back to a question I posed previously: When you advertise for a bilingual position, I have been led to believe, rightly or wrongly, and maybe you can correct the record here, are we advertising in Quebec and are we indeed bringing in people from Quebec because of a lack of proficient people available here in Toronto? Would you have statistics on that? There is a furore out there that says that most of our bilingual positions are being filled by some people outside the province. Could you set the record straight?

Mr. Beauregard: There are no statistics on it. I guess if we went

back and looked at La Presse and Le Devoir and the Montreal Gazette for the last year, we could find out how many ministries advertise for positions outside of Ontario. It is not unusual for governments and organizations to go outside Canada. The Globe and Mail on Saturday has advertisements from British Columbia, Alberta and Prince Edward Island. The labour market is organized in such a way in Canada that it is free; people can move from one area to another.

There is not a reliance on bilingual people from Quebec to provide services, except perhaps in a very specialized area where we have determined that Ontario does not have the required capabilities. Then we advertise nationwide in the sense that when we advertise outside of Ontario, it is because we decide to cast our net. We do that not only for designated positions, we do that for all types of positions. If we cannot find in Ontario the professional or the person we require with a certain number of capabilities, then obviously, because the labour market is open in Canada, we would go outside, but there is not a reliance on Quebec for filling designated positions. I am quite sure that we are finding in Ontario through our own system, and because we do train people, the number of required positions at this time.

There is a problem because there is a lack of qualified bilingual professionals in certain fields, for example, doctors and specialized nurses and social workers. That has to be corrected through our educational system.

Mr. Villeneuve: As my final question, can I safely assume then and tell people within my riding that indeed all avenues, or as many avenues as is possible, have been explored by the different ministries prior to advertising beyond the borders of the province?

Mr. Beauregard: Yes.

Mr. Raymond: If I may go back to Mr. Villeneuve's second-last point for a brief moment, I think that on hospitals it is important to remember that will require an order in council which will designate a particular institution. The designation of an institution can be universal, that is, program-wide, or it can be partial.

I would think that the Ministry of Health, through the district health councils and the regional committees that are now in place, will come up with a plan that will rationalize the offering of services in the sense that it could be that where you find yourselves in a situation where a number of institutions exist, you do not necessarily have to designate each and every single institution. You may designate a service within a given hospital, a different service within another hospital or all services in a given hospital. That is clearly the direction that we are going in.

Mr. Pelissero: To pick up on where Mr. Villeneuve left off on his last point with respect to a designated position, I am assuming that in a designated position the individual has to have a certain level of proficiency both in English and French. Maybe some of the concerns you are hearing from some of your constituents are that they may be proficient in French but may not be proficient in English. I do not know. I just want to make sure that when we talk about designation, it is a bilingual aspect as well. Am I correct in assuming that?

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Mr. Beauregard: Yes, you are correct. The language of administration



is English. Even if you are in a designated position working for the Minister of Health (Mrs. Caplan) or any other minister, in your day-to-day relations within your ministry English is the language of transaction. Obviously you have to be at ease in that language. The requirements are for French.

Mr. Pelissero: With regard to the other area of questioning, coming back to Mr. Breaugh with respect to, if citizens or groups have a complaint, who they would be able to access with respect to Bill 8, my understanding from your answers to Mr. Nixon was that you are strictly an advisory body. Am I hearing two different messages from what you have said? Which is it?

Mr. Raymond: If it is a complaint that has to do with the implementation of Bill 8, I think that complaint would justly come to us. If it is a complaint because of an absence of service or the provision of a poor quality of service, there is a mechanism in place now and an arm of the office that is charged with the responsibility of investigating and responding to complaints. If you are talking about a complaint filed against a ministry or a regional office of a ministry, that would go to the office. If you are complaining that Bill 8 is not going far enough or going too far, then normally we get the letters.

Mr. Pelissero: Okay. Again, in responding to Mr. Breaugh's question in terms of what happens after November 1989, after your particular commission winds down, I believe you read as part of the act that people have access to the minister directly. I am assuming they would also have access to either the Ombudsman or the Ontario Human Rights Commission if individuals are having some problems. Is that not a fair interpretation?

Mr. Raymond: That is correct. As a citizen of Ontario, if you feel that you are being denied a right, you can call upon the Ombudsman to investigate your situation. There will also be, as Mr. Breaugh has indicated, a legal recourse under the act. There is a complaints mechanism within the office and then there are the ongoing discussions as to what else could be done.

I can share with you the fact that Mr. Beauregard has set up a government-wide committee of internal auditors. They are looking now, in conjunction with the human resources secretariat, at ways and means of ensuring a built-in mechanism is in place within individual ministries to audit and monitor ongoing activities. The report is not yet available, but that is in preparation now. The committee is chaired by a branch director, the director of an audit branch within a large ministry.

Mr. Pelissero: Finally, could you elaborate a little on the background of the other four members of your commission? Mr. Breaugh raised the point. You identified yourself as a career civil servant and certainly Mr. Beauregard works for the Office of Francophone Affairs. What about the other four commission members?

Mr. Raymond: We have four external members. Marc-Yvain Giroux is a retired superintendent of schools with the Niagara South Board of Education in Welland. He was a school principal for many years. I have known Marc-Yvain for a number of years. As a matter of fact, that is my background as well and he and I go back a few years. He was director of TVOntario and active in the establishment of regional services for the French-language CBC. He studied at the University of Ottawa, the University of Toronto and holds a masters degree in education. He is from the Niagara Peninsula.

Marie-Paule Poulin is a native of Sudbury. She is currently the secretary general of the French-language CBC, Radio-Canada, in Ottawa. She is a former vice-president of regional broadcasting with the CBC. She held the position of director of French-language radio for the CBC in Sudbury and she was the founding director, I guess you would call it, of the local station, CBON. She is a graduate of Laurentian University and holds a master's degree in social sciences from the University of Montreal.

Mrs. Webster is a member of the national board of directors and the national executive committee of Canadian Parents for French. She is a director of the Ontario branch of the same organization. Is she not the president now?

Ms. Shenstone: Of the Ontario chapter.

Mr. Raymond: The Ontario chapter of that organization. She is one of the founding members and the first national president of Canadian Parents for French. She is a director and a member of the executive committee of the Society for Educational Visits and Exchanges in Canada, and she is a member—a recent development—of the board of governors of York University.

We lost, with great regret, Jean-François Aubé, who passed away in October. He was a very successful lawyer practising in Timmins, a former chairman of the French-language trustees association, quite respected not only in his own community but province-wide.

Mr. Aubé has now been replaced by Marcel André Sauvé of North Bay. He lives in North Bay, where he is director general of the cultural centre Les Compagnons des Francs Loisirs, and has been since 1984; and is very active within numerous provincial organizations. As a matter of fact, he is past president of the Assemblée des Centres culterels de l'Ontario, which is the association of French-language cultural centres of Ontario. He was president from 1984 to 1988. He is a graduate of the University of Ottawa, Brock University and was appointed shortly after Mr. Aubé passed away.

Those are the four outside or external members of the commission.

Mr. Jackson: I have three questions, which I hope will be brief. My first has to do with the French Language Services Act designated areas. I come from Burlington, adjacent to Hamilton-Wentworth, which I understand is a designated area.

With this map here, it is apparent that you have run out of red ink, because there are several areas of the map that are not designated. I wondered if there was a reason why the city of Mississauga was not coloured red or why the city of Hamilton was not or Welland or Port Colborne. You seem to have fairly accurately portrayed the designated areas in all other parts of the province, except in the Golden Horseshoe.

Mr. Raymond: I was not around at the time the map was finished. Are they listed on the side?

Mr. Jackson: They are listed but not shown. It just struck me as odd.

Mr. Beauregard: It is the black dots. It could have been coloured.

Mr. Jackson: The city of Mississauga represents over a third of Peel region. You can find it to designate a small section of Simcoe county in two areas, but one would look at that and say it is a northern, eastern and



western problem or it is a northern, eastern and western initiative, but clearly there are government initiatives occurring in the Golden Horseshoe that are not really demonstrated here. It is the same for a major portion of the city of Hamilton. I have several regional offices in my riding, which is in Halton, which have positions that have been designated because they touch on those regions; the reference you made earlier.

Mr. Raymond: Touch on those regions or serve, as Rémy explained in response to Mr. Villeneuve's question, or the office they are attached to serves a designated area.

Mr. Jackson: I understand that. I was just wondering if you were going to be doing a reprint of the map and correcting that, making sure the map accurately reflects the designated areas. This is not an accurate map, because you have to read in the very small print, bilingual ledger that Hamilton has been designated, that the city of Mississauga has been designated, that Welland and Port Colborne have been designated. I share that with you as an observation.

Mr. J. B. Nixon: Is it not the case that regions which have been designated under the act are coloured in red on the map and cities that have been designated are so designated by way of black dots? Generally, on a map, a city is smaller than a region and therefore black.

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Mr. Breaugh: This is way too technical for me.

Mr. Jackson: That would account for Metro Toronto's treatment.

Mr. J. B. Nixon: Metro Toronto is a region. I know you are from Burlington, but Metro Toronto is a region, not a city.

Mr. Raymond: I would not want to engage in a—

Interjections.

Mr. Raymond: I know that Pembroke is a black dot within a red square.

Mr. Jackson: My second question has to do with this whole process of priority-setting, which you do, and you have carefully explained to us, in sort of a consultative mode, consulting with the francophone community and then recommending to the government.

As a legislator of four years with a modest but fairly active francophone community in my riding, I have been exposed to several observations and they raise questions in my mind.

For example, I notice that liquor stores are engaged in the practice of having bilingual managers. This practice is growing and the signs on the front of them are being changed. I observe that. I question the degree to which that initiative, if it is done by the government, is more important, for example, than ensuring that when a woman who is unilingual francophone takes her child into a hospital she be able to communicate the early stages of the symptoms of that child, the degree to which the child has been suffering. It is very critical that she be able to articulate that in an emergency department. To me, that is far more important than is any initiative in terms of turning our liquor stores into bilingual showpieces.

I do not wish to overstate the case, but those are legitimate questions when you come before us and talk about, "We are now entering the difficult period; there are now going to be large sums of money, capital required in order to meet these objectives."

Where is our sense of priorities? Did you participate at all in that area? Are they initiatives that are going on separate and distinct from the Bill 8 implementation and are you addressing those outside issues, if they in fact are outside your mandate?

The other areas, of course, which I would give you as the priority areas that I think even the most unilingual anglophones in this province, and even some of the positions that we hear of, might suggest are in matters of domestic violence and in matters of health care and some of the judicial matters. These are areas that we can justifiably say our society should address and support in those areas.

However, I just raise the question about who is setting the priorities, who is giving guidance with respect to the point of bilingual store managers for the Liquor Control Board of Ontario and the considerable amount of money to change the signs and so on and so forth. Could you comment on those three or four questions I have raised in that area?

Mr. Raymond: I would like to respond in a general way and then Rény can address the specific issues.

I think it is not an either-or type of question. I think it needs to be recognized that the act is universal in its application and therefore the LCBO is compelled to meet the requirements of the act just as much as some other arm of the government.

We, as members of the commission, retain the four priority areas, and they were education in the largest sense of the word, including professional training, judicial services, community-based services, and the fourth one is obviously an offshoot of the community-based services, health services.

In response to your particular question, I think we need to say that for the lady who goes to an emergency room or a prenatal room for emergency service, that needs to be addressed as part of the designation process. Hospitals do not come under the act automatically. They will need to form part of the regional plan and the rationalization of regional services at a later date, and that should come forward from the ministry.

So I do not think it is an either-or situation. As to whether the manager needs to be bilingual or not, it is really up to the LCBO to make that determination. We take the view, as members of the commission, that the clients need to be service-driven. In other words, if in their wisdom they have decided that the manager does interface with the members of the public at large and that position needs to be designated, that is their determination, not ours.

Mr. Jackson: Clearly, my point is that when any government is driving an agenda, in the absence of very clearly defined priorities, a good priority slows down by virtue of bad priorities absorbing money as it progresses along. We see that in all manner of programs. I guess my concern is that we are hearing, as on page 9 of your brief where you say, "will not be able to provide all of its services by the...deadline," in certain areas. There are reasons for that. We are talking about time frames that are being expanded.



That is a legitimate question for the francophone community to ask as well. Who is responsible for monitoring and measuring those priorities to say, "If those moneys were not spent over here—"? I guess I am getting back to Mr. Breagh's point as well. No one wants to publicly admit that one of the ministries is doing something because it is easy to do versus whether it is really as helpful as some of the health-related priorities or the sexual assault or family violence priorities in terms of remediation and intervention. It gets back to his question about whether or not you are prepared to publicly or privately state to a ministry, "We think that if we had that money over here to spend, we could stay on track." I think we are starting to see a picture that we are falling back. That is really the area I would like to focus on.

Mr. Raymond: I do not know that the system is falling back. I think it was to be expected from the outset that some of the services would clearly not be in place fully or the full impact of the service would not be felt—

Mr. Jackson: It was oversold, but it is not falling back.

Mr. Raymond: In speaking to community groups, I make the point that come November 18, 1989, it is not going to be a dramatically different world. The services are falling into place gradually, and some of them will improve with time. I think that caution needs to be exercised in raising expectations within francophone communities to the point where "everything will be absolutely perfect on November 18." As chairman of the commission, I say we strive for quality and we are quite demanding in the filing of quality plans.

Mr. Jackson: So you do not do a critique of where government initiatives are accelerating in areas? It is like squeezing a balloon: You put pressure in one area and it bulges in another. The bulge might be in inappropriate objectives or not as significant objectives as the ones that you are articulating. Who is measuring that?

Mr. Raymond: We as a commission have established our own priorities and our guiding principles which I alluded to earlier. We as a body do not get involved in the allocation of funds or the redistribution of funds. The office interfaces with the Management Board of Cabinet and with line ministries and plays a direct role in that respect.

Mr. Jackson: So nobody is monitoring that in particular?

Mr. Raymond: No. I was going to turn to Rémy and ask him to talk to the financial process.

Mr. Beauregard: There are two matters that can be addressed: the financial matter and how we interface at work with the ministries. Because the commission recognizes that the Ministry of Health and the Ministry of Community and Social Services, to mention these two, are very important, we worked with both of those ministries in the first year and in year 2 of implementing the act in developing a plan that goes probably beyond what any other ministries are doing.

There is no comparison between what the LCBO had to put in place and what the ministries of Community and Social Services and Health will have to put in place. With these ministries, with the community and with the institutions we had two forums: one in June 1987 in Ottawa on social services—it was a provincial forum with institutions, ministry and community people being invited to attend, to interface in order to develop long-term

priorities in the development of social services in French, recognizing that when we have to deal with something like 2,000 agencies, we even have to prioritize within these agencies those that are going to be designated, those which have interest in providing services in French and those which will be capable of doing it or interested in doing it. We did the same with the Ministry of Health.

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It is possible, and these two situations demonstrate it, to work with the ministry in making sure that some priority areas receive more attention than others.

Mr. Jackson: For clarification, within the four priority areas you are dealing with?

Mr. Beauregard: Right.

Mr. Jackson: But the LCBO is outside that. You are not really called upon to address that, nor are you monitoring. That is all I am really trying to get at.

Mr. Beauregard: Except that the LCBO comes under the act in providing services to the public. Even before the act came into place, there was a decision within the LCBO to use new colours and new signage.

As you know they are using gold and purple or magenta or whatever. There is a brand-new signage or corporate image of the LCBO. They decided at the time that if they were going to redo the signage for all of their stores, they should use that occasion to add bilingual signage. They are having bilingual signs installed as signs are being replaced.

Mr. J. B. Nixon: They took it out of the blue zone.

Miss Roberts: You do not have to answer that.

Mr. Jackson: I will not ask how come you are so familiar with the LCBO. We are only kidding.

Mr. Beauregard: As the signs are going up, because the LCBO decided to reorganize its corporate image, it is becoming evident that these bilingual signs are going up. Also, just to sort of give information on the LCBO, the LCBO has 620 stores in the province.

Mr. Raymond: And he has not been to every one of them.

Mr. Beauregard: Two hundred and fifty of these stores are in designated areas, but not all 250 will provide services in French; only 114—half of them—because there is a provision in the act which calls for multiple offices. It is possible, within an area where a ministry or an agency has more than one office, to designate one or more to provide services. Actually, out of the 620 stores, only 114 will provide services in French. They are in heavily designated areas and most of them already had services in French when the act came in.

Mr. Jackson: This is my final question and I will try to be brief. I would appreciate your clarifying this point because it possibly falls into the misconception category. I have heard that some of the government's interviews,



which are mandated as a function of your commission's work in ensuring implementation in various ministries, are conducted by francophones from Quebec.

Do you have any knowledge of this? Is this, in fact, going on anywhere? Do we not have sufficient domestic Ontario francophone talent to do that?

Mr. Beauregard: Do you mean for candidates applying for public service positions?

Mr. Jackson: No, doing interviews. In other words, if you are in a designated area and you are looking for services, you obviously have to do the interview with someone who is fluent and bilingual in order to meet the objectives as set out in the ads for a person who is francophone or bilingual and to measure the appropriateness of their appointment.

I realize that in the Ministry of Education, which is my critic area, we are literally airlifting bilingual people into our province because we cannot keep up with the program demands. That is understandable, that is separate. I am talking about individuals coming from Quebec conducting interviews. I have heard of this. As I say, I will leave it in the realm of rumour. Do you have any evidence of people being employed by the government to conduct interviews?

Mr. Raymond: I am left with the impression that you are making reference, to use the jargon, to headhunters being employed by ministries.

Mr. Jackson: My interpretation of a headhunter and yours may be different. Just to make it really simple, the ministry requires someone to conduct the interviews to make sure of the appropriateness of a candidate. My question simply is, is there any information that you have regarding the fact that candidates from Quebec are being utilized in a minimal number of cases or many cases? I do not know. But are they in any cases, to your knowledge, obtaining the services of people from Quebec to conduct those interviews or do we have sufficient people here in Ontario to do that?

Mr. Raymond: If I may respond, in answer to your specific question, no, I for one do not have any information along those lines but, as a former chairman of the Civil Service Commission, I am somewhat familiar with the way selection panels are appointed. Normally it is under the authority of the deputy minister, and that authority, in many instances, is delegated to the director of the human resources branch. Every time there is a competition, a panel is struck. I would think that for a designated position where there are linguistic requirements, it would be wise to have not only representatives from the human resources branch and the program that the candidate will eventually be attached to, but also someone with the French-language capability to judge the abilities of the candidate in the linguistic field.

I would be much surprised if we came across a situation where a ministry has retained the services of a person from Quebec to conduct, on its behalf, the interviews with a number of outside candidates for a given job. I am not aware of any such circumstances.

Mr. Chairman: I have a couple of questions that I would like to ask you. In your personal opinion, how do you feel the commission has fulfilled its mandate? Do you feel that it has done a good job implementing the legislation? Have there been some ministries that perhaps have gone beyond what you anticipated or some ministries that are slow at moving? What is your personal opinion?

Mr. Raymond: I would like to respond to the first part of your question first. I think we have done fairly well as a commission. As far as ministries are concerned, as has been pointed out, we have retained certain priorities and we judge plans against those priorities. I like to take the view, and as a matter of fact I take pleasure in reminding co-ordinators and deputies, that in the eyes of the commission every ministry is as important as the other ones.

There is a tendency to say, "Oh, my God, the big Ministry of Health against the little Ministry of Government Services," but if you are a French-speaking resident in Ontario and the service that you require is from MGS as opposed to being from the local district health council, that service is as important, as crucial and as vital. Therefore, there are different plans.

Some are more technically oriented, because of the very nature of the ministry. Others, like the Ministry of Community and Social Services, the Ministry of Culture and the Ministry of Citizenship, by the very nature of their mandate, reach out to the population in a more direct and vital way. But I like to think that so far—and the proof will be in the pudding come November 18—we only pass judgement on the stated intentions of a ministry.

I like to think that we are generally very pleased with the quality of the plans. There are outstanding issues. We have not put the final seal of approval on all the plans yet and there are outstanding issues that will need to be addressed in a fairly aggressive way over the next little while, but I am confident that, in conjunction with the deputy's office and the deputy himself or herself, we can arrive at acceptable solutions to those problems.

Mr. Chairman: I guess one of the reasons why I asked that question is that I was wondering if some of the ministries were overreacting to the plans you have to put in place. Where I have seen large ads in every paper across the province in both official languages, I wonder why the ministries advertise in both official languages when it is in areas that are not designated?

Mr. Raymond: The office prepared, and we approved, a set of fairly tight guidelines on the advertising of positions. I can tell you—I can read them to you, as a matter of fact—that the guideline says that where a position is advertised in an English newspaper it is to be advertised in English with a sentence in French, a cross-reference that if you need additional information in French, you can call this number. The guideline does not call for side-by-side ads in an English-language newspaper, nor does it call for side-by-side ads in a French-language newspaper. There is a cross-reference made.

I am aware of instances where ministries, by inadvertence I would suspect, saw fit in their wisdom to advertise in both languages with full-blown ads in English and French side by side. That is not the guideline that we have approved and I think the corrections that you have alluded to have since been directed.

Mr. Chairman: As late as last Saturday, there were ads in both the Barrie Examiner and the Orillia paper. Actually, it was March 11.

Mr. Raymond: Side by side in English and French?

Mr. Chairman: One on top of the other. It is a full page of two ads, so they had two bilingual ads and two English ads.



Mr. Raymond: For the same positions?

Mr. Chairman: The same positions.

Mr. Raymond: That is not in keeping with our guidelines.

Mr. Chairman: That is why I asked the question. Are there some ministries that are more proactive than others?

Mr. Raymond: That is being more than proactive; that is being a little zealous.

Mr. Chairman: The other thing that can happen is that you do not have people in place to look after what is run within the ministry with regard to this service. If the people were in place, then those types of things probably would not happen.

Mr. Raymond: I do not know the circumstances, but there is a French-language co-ordinator and the human resources directors across the government are aware of the guidelines. Maybe the word just did not reach that regional office in Barrie yet. But that is clearly not in the spirit of this guideline.

Mr. Chairman: I would like to follow up after lunch on some of the questions Mr. Breaugh asked. We will adjourn now until two o'clock this afternoon.

The committee recessed at 12:04 p.m.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

AGENCY REVIEW:  
ONTARIO FRENCH LANGUAGE SERVICES COMMISSION

WEDNESDAY, MARCH 22, 1989

Afternoon Sitting



STANDING COMMITTEE ON GOVERNMENT AGENCIES

CHAIRMAN: McLean, Allan K. (Simcoe East PC)

VICE-CHAIRMAN: Marland, Margaret (Mississauga South PC)

Ballinger, William G. (Durham-York L)

Breaugh, Michael J. (Oshawa NDP)

Martel, Shelley (Sudbury East NDP)

Miller, Gordon I. (Norfolk L)

Nixon, J. Bradford (York Mills L)

Roberts, Marietta L. D. (Elgin L)

Runciman, Robert W. (Leeds-Grenville PC)

South, Larry (Frontenac-Addington L)

Velshi, Murad (Don Mills L)

Substitutions:

Jackson, Cameron (Burlington South PC) for Mr. Runciman

Pelissero, Harry E. (Lincoln L) for Mr. Ballinger

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mrs. Marland

Clerk: Deller, Deborah

Staff:

Smith, Cynthia M., Chief, Legislative Research Service

Witnesses:

From the Ontario French Language Services Commission:

Raymond, Gérard, Chairman

From the Office of Francophone Affairs:

Beauregard, Rémy M., Executive Director



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday, March 22, 1989

The committee resumed at 2:05 p.m. in room 151.

AGENCY REVIEW: ONTARIO FRENCH LANGUAGE SERVICES COMMISSION  
(continued)

Mr. Chairman: This is the government agencies committee that is dealing with the Ontario French Language Services Commission. When we adjourned at noon, the chairman had the floor. Perhaps he will just continue very, very briefly, and then we will proceed with other members after that time.

I want to lead into some of the questions with regard to what Mr. Breaugh had brought up this morning, as to when November 18 comes and the commission no longer has any jurisdiction. I do have a concern with regard to the scope of the act and what it intends to do. Without a commission or a body such as you have, I am wondering where the direct avenue is going to be with regard to the filtration of services.

I have a couple of paragraphs out of this briefing that I would like to read:

"The act gives...any individual or corporate entity the right to receive services in French from the government of Ontario in designated areas of the province. It ensures that all ministries, boards, commissions and corporations, the majority of whose members or directors are appointed by the Lieutenant Governor in Council, will provide French-language services in all head or central offices as well as in specified offices located in or serving designated areas. In addition, nonprofit, provincially funded corporations that provides services to the public, psychiatric and residential facilities that are administered by ministries and colleges of applied arts and technology may be designated to provide services in French. A university may also be designated if it consents to its designation."

Without a commission such as you have now, who is going to see that this is implemented and who is going to be over it, other than Mr. Grandmaitre's ministry?

Mr. Raymond: Your last few words would lead me to believe that you clearly put your finger on the intent that is stated in the act, that is, that the minister responsible for francophone affairs will continue to be responsible for policy matters government-wide and will be supported in that role by the Office of Francophone Affairs.

Although I made the distinction this morning, I think it is worth repeating. The office is not the ministry in the narrow traditional sense of the word. The office really is a central agency of the government and therefore reaches out to every line ministry and does indeed provide assistance to deputies, co-ordinators and senior executives in the various ministries.

I think the outstanding question that you allude to is, should there be

external input into that process? I attempted to respond to that question this morning. This is a personal view, and I think there are many ways whereby a minister responsible for francophone affairs and an office can indeed seek out advice or counsel from the community groups through a large network of organizations that do exist province-wide.

Whether that should be formalized in some way is the real question, and I am of the view that outside input will be a requirement. What form that should take is still somewhat vague in my own mind and, as I indicated again this morning, we, the commission members, are going to address that very question at our next meeting and probably over the next couple of meetings, with a view to providing advice to the minister and to the government.

It remains to be clarified in our own minds as to what advice we want to provide to the government and then what the government itself will want to accept by way of advice from the commission.

Mr. Chairman: When your term is finished, will you be making a report with recommendations to the minister of how you feel he should proceed to implement the policies that are in the act?

1410

Mr. Raymond: We are charged with the responsibility of producing an annual report and we are caught in a bit of a bind, Mr. Chairman, if I may say so, in the sense that the end of the next fiscal year does not quite coincide with the termination of the commission. What we have talked about so far is maybe combining the last full annual report with a final report that would be intended for tabling in the Legislature. In addition, we have ongoing discussions with the minister, and I am sure we will seek out opportunities to advise the minister on this very matter.

Mr. Chairman: I have had some people come to me, such as ambulance drivers and people who work in the Liquor Control Board of Ontario stores, expressing their concern with regard to work in those facilities. They believe they do not have the same opportunity as a francophone would have. I cannot answer the question. That is why I am asking you. What do I say to the people who ask me that type of question?

Mr. Raymond: There are a couple of misconceptions going around that I think need to be clarified. The allegation has been made that in order for individuals to be able to secure work with the government of Ontario in future, beyond November 1989, they will need to be bilingual.

Such is not the case, which is a point that was made in the film clip this morning. We attempted to explain to the members of the committee the designation process for positions this morning. It is clearly stated in the implementation manual. In order for a position to be designated, the incumbent must be bilingual or meet the linguistic requirements, or the position must be vacant.

Government-wide, while we do not have the exact figures, fewer than 10 per cent of the positions will be designated as requiring a capability in French. Of those positions, the implementation of French-language services in the province did not start on the morning of November 18, 1986. As a matter of fact, I was involved with an earlier commission that goes back to 1968.

A number of ministries had already started the process of designating



positions prior to November 1986 and, as Rémy indicated this morning—I think he used the figure of 60 per cent—60 per cent of those positions were already filled by people with the linguistic qualifications that were required.

I do not know how many positions would be designated in the particular LCBO store that you are talking about, but again, as Rémy alluded to this morning, it is not every store that will be expected to provide the service. I know the Welland area fairly well. There are two LCBO stores in the city of Welland, for instance, and I have seen the plan. One of those two stores will be designated to provide the service. That will be a small group of employees within a single store within the city boundaries of Welland.

I can understand that people would feel nervous, but I would not be overly concerned about it.

Mr. Chairman: The strategy plan that was approved in 1988 designated about 551 full-time and part-time positions requiring advanced level in French capabilities and the French-language people make up at least 10 per cent of the population of urban centres. What committee would make that designation? Would it be the commissioner who makes that designation?

Mr. Raymond: I am sorry. I missed that.

Mr. Chairman: The strategy plan which was approved in September 1988 designates 551 full-time and part-time positions requiring an advanced level of French capabilities.

Mr. Raymond: Is this within a given ministry?

Mr. Chairman: I think that is within the whole government services.

Mr. Raymond: I am not familiar with the figure of 551. What the ministries have done is designated for their own purposes their own positions.

Mr. Chairman: It is in the Ministry of Correctional Services update.

Mr. Raymond: That would be the figure then for the Ministry of Correctional Services.

Mr. Chairman: I see.

Mr. Nixon, you had some questions beforehand. I have somebody else on the list. Do you want to go first?

Mr. J. B. Nixon: Just a couple of questions. People have raised questions with me about what advanced level French means. I think I know but I would like to get your views. I think I know because I am studying French and—

Mr. Raymond: I could tell this morning.

Mr. J. B. Nixon: My vocabulary is about double the number of words I used this morning, which is about 20, but I am classified as an intermediate. What is an advanced level?

Mr. Raymond: Rémy, would you like to speak to that?

Mr. Villeneuve: Enough to make it to cabinet.

Mr. J. B. Nixon: I am not there.

Mr. Chairman: Just ignore the interjections.

Mr. Beauregard: The advanced level is for someone to be able to participate in a conversation where there would be an exchange that would flow normally from a conversation, to be able to read the language, in some cases write, not necessarily original material, but be able to fill out a form or answer to a form. That would be the advanced level.

The superior level, as I said this morning, is to write original, complex material directly in French, not as a translator but as someone who does the final draft.

Mr. J. B. Nixon: In other words, someone who can carry on a normal day-to-day conversation and write a simple letter.

Mr. Beauregard: Right.

Mr. J. B. Nixon: The other question I had: Mr. Jackson raised some questions about the LCBO and I think you answered them, but I also had an experience with the LCBO. It was funny actually; at least I found it humorous when the new sign went up saying, "Liquor Store Vins & Spiritueux," as opposed to "LCBO."

I received a call from—this was even part of my election—someone who knew I was running and who screamed and called me all sorts of nasty names, which I will not repeat, alleging that I was directly responsible for this and I would not get his vote. I said: "Now, wait a second. My understanding is the LCBO are now known as the liquor store which happens to sell vins et spiritueux. It is an independent agency which made its own decision as to what it would call itself and it is entitled to do that."

Is that your understanding? No one told them they had to do that, did they?

Mr. Beauregard: My understanding, because I have discussed this matter with them, is that they have tried to identify in both languages what would be the best way to identify their type of business. It seemed from the people they talked to that in English "liquor store" sort of drives the message through and in French "vins et spiritueux" also drives the message through, that in this store this is what you find. "Magasin des alcools," which was used previously, is a word-for-word translation of "liquor store" but does not in French convey the message.

Mr. J. B. Nixon: It is a marketing decision taken by the Liquor Control Board of Ontario, as I understand it.

Mr. Raymond: And I would suspect with the advice of marketing experts, not necessarily government people.

Mr. J. B. Nixon: That is my understanding too. It was not government people who were involved.

Mr. Villeneuve: I understand from what you said a while ago that about 60 per cent of the designated position were already filled by people who were meeting the required criteria for bilingualism in the two official languages of our province. Is this approximately correct?

Mr. Beauregard: Yes, and I must point out that that was in northern



and eastern Ontario. In these two regions, the number of designated positions that were created were already filled to the extent of about 60 per cent by incumbents having the required language capabilities.

Where the number of designated positions increased was with central agencies, because the act did specify that the ministry and the central agency had to provide the services and that is where there was an increase in designated positions when the act came into force. It is mostly from reading the ads that we can gather that much. That is where most of the recruitment was done.

1420

Mr. Villeneuve: So some 40 per cent of the totally designated positions had to be filled or are waiting to be filled. Is this correct?

Mr. Beauregard: Had to be filled. We do not know to date what percentage of the total number of designated positions are going to be filled when the act comes into force, but I would say it would be in excess of 75 per cent to 80 per cent.

Mr. Raymond: That is an important distinction. There is also the misunderstanding that every position will be filled come November 18, 1989. Some of those positions are slated for designation but will not be filled until the incumbent has seen fit to take a course or the position becomes vacant.

Mr. Villeneuve: Do you know what level these incumbents may be at present? Would they be in the first, second, third or fourth category? What chance does that incumbent have of retaining his position and indeed retaining the possibility of enhancing his position within the civil service or whatever position he is in within the ministry?

Mr. Beauregard: All incumbents in positions slated for future designation have been offered language training but they did not have to take language training if they did not want to. We have offered, and these people were the priorities of the ministries in providing language training. If the person did not want to take language training, then obviously the ministry had to take alternative measures to provide the service, a 1-800 line to connect that particular office with another office where the service is available or ask a colleague to provide the service. In some cases, alternative measures had to be taken.

For those who accepted going into language training, the level would vary from one person to another. Maybe it would be possible to gather the information at some point. Who are those people slated for designated positions who are following language training and at what level are they? I guess we could get that information together. I cannot venture to say. It really varies. Yesterday, I was at an executive meeting and met people who are in language training and, as you talk with people, you can sort of relate at what level they are, but it varies from one individual to another.

From meeting a lot of Ontario civil servants, I must say that those who are in language training are dedicated to learning the language, and even though the level varies, they have undertaken to do this and will eventually reach the level that is required by their position or by the level the person wants to achieve.

Mr. Villeneuve: What I gather then is that these people who may not

quite meet the criteria or may not have quite met the criteria for bilingualism a year or two ago, if they have taken the steps that are available to them, could indeed continue enhancing their careers without being either red-circled or becoming redundant to the system.

Mr. Raymond: We have made that very clear when we have met with groups of civil servants in the past. No one is red-circled because of the French Language Services Act. No one's career in the actual position is in jeopardy because of the act. People have an opportunity to take language training if they want to. If they do not want to take language training, then it is the responsibility of the ministry to find alternative measures of providing the services.

We have lists within ministry plans of situations where ministries indicate what alternative measures will be taken to provide the service when the act comes into force because they know they will not have the full complement of designated positions.

Miss Roberts: I just wanted to make that very point that has just been made, that no one's career is going to be hampered. In fact, francophones have to upgrade their English so that they can continue on in their careers. I think from listening to these two gentlemen today, it has been very helpful to me to see how very clear it is that there are certain designated jobs and that those jobs are for bilingual people and that the French service is to be made available.

I was very pleased with the answer that was just given, that it does not stop a career because you have not taken the language training. You can move up or you can move laterally, but not into a designated position, if you are not a person who is proficient in the languages at the level that is necessary for that designated job. A very important thing that I would like to see continue, as I and my friends have been discussing, is that there be some outside input or some way of checking to see if that is going to continue on for the next three to five years, because from what I understand today, there is a five-year plan in place for most ministries. Is that correct?

Mr. Raymond: Most agencies that relate to ministries.

Miss Roberts: Have you set up some type of plan that will allow ministries to check themselves to see if they are meeting their own particular designated areas and how they are doing that?

Mr. Raymond: I made a brief reference this morning to the fact that the office under Rémy's leadership has set up an interministerial committee of auditors. The one committee that I alluded to is chaired by the audit director from the Ministry of Health, as a matter of fact, which is a large branch. At this very moment, they are preparing proposals that will in due course come to the office into the commission on ongoing mechanisms to ensure that both the actual plans are being implemented and the human resources plan is being implemented.

I know for a fact that the civil service commission also has responsibility when it comes to positions, and there will be a mechanism which is under preparation now between the office and the Human Resources Secretariat as to how all of the designated positions will indeed be filled over the period beyond November 18, 1989.

If I may, while I have the floor, Mr. Chairman, I would like to respond



to what Mr. Villeneuve and Miss Roberts have been saying.

In looking at a human resources plan you have to look at a work unit. You have a number of positions which are identical in classification and job description. It may be enough that only one out of nine identical positions needs to be designated. The rollover is such within the public service that it would be easy for position B to become vacant as opposed to position A. Nothing says that it is position A that needs to be designated or filled with a bilingual person. If position B becomes vacant, that is an opportunity for the ministry, if it so decides, to meet the requirements of its own implementation plan.

Conservation officers—I think they have a fancier name these days—for instance, would work in teams of I do not know how many within a district or a region, but it is only very rare that there would be one position that would need to be designated where only one position existed. We would recognize that the smaller the work unit, the more difficult it is to designate a position.

Mr. Chairman: If I could follow-up on that very point. The policy says that no new positions were created in the designation process and non-French-speaking staff will not be removed from the designated positions. Once a position is designated, if you are non-French-speaking, you will not be removed. Instead, designated positions will be filled with French-speaking staff as vacancies occur.

Mr. Raymond: That is the policy.

Mr. Chairman: Then what do you say to someone who is not bilingual who is looking for a job? Does that give the advantage, then, to the francophone who is bilingual?

Mr. Raymond: Not if that person who is not fluent in the French language is not applying for a designated position.

Mr. Chairman: It was not designated as long as he was there. As long as the previous employee was there, it was not bilingual; he was filling that position and doing that job. So, the ministry says now: "This position is now designated. When he goes, we will have to hire a bilingual person to fill it."

Mr. Raymond: And they would so state in the ad that this position is designated and requires some fluency in the French language. But there may be an identical position within that unit, which I have been trying to describe, that does not have the linguistic requirement and therefore does not exclude anybody from applying for that job.

1430

Mr. Chairman: If you are bilingual.

Mr. Raymond: If you are bilingual and you have applied for a nondesignated position, I guess you simply do not have to use your linguistic talents.

Mr. Villeneuve: I am kind of pleased that the member for Elgin, Miss Roberts, agrees with me that there has been some degree of misunderstanding, some degree of perpetration of information that was not quite accurate. I think a hearing such as this should have happened several years ago and it would have probably avoided a lot of hard feelings and misunderstandings.

Mr. J. B. Nixon: Yes, around about 1981.

Miss Roberts: He is not serious.

Mr. Villeneuve: Continuing my train of thought, my question is: Do you have any idea how many of those positions held by the about 90,000 civil servants—that is probably the closest figure that we could come to—would be designated positions requiring the two official languages of our country?

Mr. Raymond: I think Rémy is in a better position to address that position than I am.

Mr. Villeneuve: We have heard rumours ranging everywhere from 100 per cent down to five per cent. I would like to get it from the people who are involved here.

Mr. Beauregard: At the present, the number of designated positions for ministries is 5,166.

Mr. Villeneuve: If we assume that there is a force of 90,000 civil servants in Ontario—

Mr. Beauregard: Yes, we base our figures on a workforce of 79,000, because there are some schedule 2 and 3 agencies which are not included in the regular Ontario public service. So, based on 79,379 positions, right now we have 5,166 positions that are designated. I do not know what percentage that is, but—

Mr. Villeneuve: It is not far from the percentage of the so-called recognized francophone population, which in Ontario is somewhere between five and six per cent, although we probably have many other Ontarians who can speak the two official languages of Canada.

In that light, I have had, again along the train of thought of some of the questioning this morning, heard of some people who are bilingual, but they were told for whatever reason—and I am not quite sure what "culturally sensitive" means, but apparently those two words have been used to eliminate people who were considered to be not "culturally sensitive." Does that mean anything to you? If it does, please explain. I have problems with it.

Mr. Raymond: I would respond in this way, Mr. Villeneuve. It all depends on the position that is being filled. The vast majority of positions—if it is a mere filling out of an application and response to very technical questions, I think that is easily accomplished. The example that your colleague used this morning—the young mother who has a very sick child and goes to a prenatal or postnatal clinic—I think the cultural dimension of the care being provided is indeed an essential component. So, I make a distinction between filling out an application for a driver's licence and a young mother going to a postnatal clinic for care.

I come from the field of education and I think—not that school boards do not come under the ambit of the act—and you would agree I am sure, that in a French language school the cultural dimension to the academic program is an essential component. It is in that sense, I think, that the phrase "culturally sensitive" is being used.

Mr. Villeneuve: I will not take up a lot more time. I have a couple of job advertisements here of the province of Ontario, the Ontario public



service, and they require a number of professional qualifications, and then it says: "Advanced oral French language skills. Excellent English. Less qualified applicants may be considered at a lower salary."

For some reason, anyone who does not get hired under this—and he may be professional in every way and he may or may not have advanced oral French-language skills, but that inevitably winds up being the scapegoat—"I was not good enough in French." Can you comment on that? I get that all the time in the area that I represent. Somebody says, "Well, because the requirement of the position was advanced oral French-language skills, I was turned down."

Mr. Raymond: In the jargon of the trade—and you may be familiar with the phrase—it is called "underfill." It is not an uncommon occurrence in the public service when you advertise for a position and you do not get a candidate who fully meets all the requirements of the job. You can fill that position on an underfill basis and get an undertaking from the candidate that he will indeed complete the additional training or courses that will bring him to the point where he fully meets all the requirements.

I have not seen that particular ad, but I would think, if I were the deputy minister, that would mean to me that if you are not fully bilingual or do not meet the advanced, superior or intermediate level that is called for, but you are quite willing to go to the French-language training centre and upgrade your French-language skills, then feel free to apply. As to whether the applicant is selected or not would be up to the panel which, in turn, would make a recommendation to the director of the human resources branch. That is I think the intent of that phrase that you have just quoted.

Mr. Villeneuve: It is very sensitive issue and it is one that I certainly have difficulty in attempting to explain. I have even given up trying to explain it because I seem to get into trouble every time I try. So I would certainly appreciate some degree of clarification on that, both what you have just said and any further clarification on that. I will relinquish to my colleagues, Mr. Chairman.

Mr. Breaugh: I have two or three areas that I would like to pursue a bit with you, but I just cannot leave this one without at least commenting that what you say and what you have said to us here today seems fairly clear. That perception is not shared widely by the people who work for the province of Ontario. If I were to give you one little piece of advice—there is a lot of fear and apprehension out there that needs to be addressed, and I know that you have probably got videos and pieces of paper and all made speeches—the only message I am giving you is that what you are saying is not being received by the people who need to receive that.

I think, in part, we are paying a bit of a price in Ontario. Everybody who works for the government in Ontario, I am sure, knows someone who has worked for the government of Canada in the last decade or so and has his or her personal horror story of somebody who studied the French language for a long period of time at great public expense and never used it and felt his career was ended because he could not speak the French language.

I am just making a pitch to you that I believe that if we are to have French-language services widely accepted by the people in Ontario and accepted by the people who work for the government of Ontario, we need to take the message that you have brought here this morning and get a lot more understanding of it among those people and by the population generally than we

have now. I am not being critical of what you might have done. I am just saying there is a large job that has to be addressed there.

Mr. Raymond: It is a point of view that I would share, that we could probably do more. As a matter of fact, in the few plans that we have approved so far as a commission we have attached a bit of a caveat to the approval and that is that the ministry file with the Office of Francophone Affairs a communications plan, both internally and externally.

As far as the public service at large is concerned—I see that you are aware of some of initiatives that have already taken place, and I have brought with me examples of—

Mr. Breaugh: I was afraid you would have.

Mr. Raymond: There is an orientation program for new employees in each and every ministry, and there is another component to that program that is being developed now and will be in place before the act comes into force, and that is the French Language Services Act.

I am of the view that all civil servants, whether they are involved in dispensing French-language services or not, should be made aware of the existence of the act when they become a civil servant in any given ministry, not that they need to become bilingual, not that they need to even answer the phone in French or in English, but they should be made aware of the general thrust of the act, the way all employees, in my opinion, need to be made aware of the employment equity initiative, of some of the more corporate initiatives. Rémy and the deputy minister in the Human Resources Secretariat are working on a plan now that would be an add-on to the orientation program for new employees.

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Mr. Breaugh: I think, for example, many members here, myself included, are people who want the French Language Services Act itself to be successful in Ontario and we want this commission to be effective in the implementation of that. Most of us would be really saddened if this whole initiative, which is very important to a fairly substantial portion of our population, falls on hard times because we did not communicate effectively what it is we are trying to do.

It is one thing to have an argument with somebody because you have a real difference of opinion—without question, there are people in Ontario who do not want anyone in this province to ever speak the French language—and let's have an argument with them, but let's not have an argument over whether or not the liquor stores have a sign out front that is in English and in French. It makes no difference to me or anybody else and it provides no level of service to anybody either. If we can have arguments, let's have substantive arguments. I think you have begun to address some of this problem. I am trying to tell you that the message has not been received all over the place as yet, and it may take a generation or two before it is, just because people may, quite rightly, say, "I have read your brochure, I have heard your speech, I have seen your video, but I want to know what you are actually going to do." People may be that cynical about it.

Let me pursue a couple of areas that are of some concern to me. You have mentioned a couple of times today that municipalities and hospitals are not bound by this and all of that, but when you go through the fine print of your



reports, and of the act and what people have to say, when it comes right down to it, those who receive money in the form of transfer payments from the province of Ontario, whether directly or indirectly, are going to come under some influence to provide French-language services.

Many of those agencies are in a good position to do that. As you have pointed out, they are in areas where there is a fairly substantial francophone population. It should not be difficult to see there are nurses who can speak the French language, or doctors or psychiatrists who can, but we also know that there are some problems in that regard. But for volunteer agencies, for example, for nonprofit corporations or agencies that are operative at the municipal level, which may well get some funding from the province of Ontario, but they may be kind of in the no man's land, and there are a lot of those, they are not directly agencies of the province or a municipality or agencies of anybody but they probably get funding of some sort from the federal government, the province of Ontario and from their local government. They somehow fall into a greyer area, and I would be interested in hearing a little bit more about how you intend to proceed with that.

Mr. Raymond: The two largest ministries that do have community agencies are obviously well known to you; they are the Ministry of Community and Social Services and the Ministry of Health. What they are doing at the present time through the aegis of the local district health council—and they have, in turn, appointed a French-language advisory committee at the local level made up of practitioners in the area and the French-language community so there is community input in the process—is preparing regional plans.

I hope that, again, a rational plan would flow from that exercise in the sense that the agencies that do provide the vital services and do not quite meet the narrow definition of a transfer-payment agency could well voluntarily offer—and in many instances do offer services at the present time. What they need to do, in my opinion, is bring all the pieces together and form a cohesive plan which indeed will address the needs of the francophone community in that region.

I do not know whether that answers your question fully.

Mr. Breaugh: Let me try to get a little more specific for you then. A police officer in a nondesignated area, according to a reading of the act, has no real obligation to speak the French language, although there may be a very real and immediate need to do so. At some point in time, someone will perk up his ears and say, "Well, whether he is working for a municipal police force or not, or whether she is directly employed by Ontario or not, the funding to pay that person's salary comes in large measure from the province, or at least in substantive measure, and we now want to bring that into the sphere of influence here."

In the defined terms that the act lays out and that you are familiar with, in a designated area of the province with a clearly designated provincial agency, the act kicks in. It is not quite so clear how that works in other circumstances. I would be interested in what you have to say about that kind of situation.

Mr. Raymond: I draw your attention to section 16 of the act. I think the situation you alluded to, in order to be implemented or followed up on, would require an amendment to the act. This clearly puts the onus on the municipality. Only the municipality can pass a bylaw within a designated area, deciding on its own to offer specific municipal services to the public. That

requires a bylaw on the part of the municipality.

Mr. Breaugh: You and I have two pretty different visions of how the world works. In my world, nobody picks out a statute and reads it. You talk to people on the street and they tell you what they need, what they want and what kinds of services ought to be provided. I am simply trying to point out to you that no matter what the act says, there will be demands for services that will come forward and municipalities will have to respond to them.

They may choose to pull out the statute and the city solicitor may choose to advise the municipal council, "You don't have to do that, or if you want to, you have to pass a municipal bylaw." The members of that council, on a daily basis, are going to be exposed to people who are demanding a level of service and will want to hear the explanation as to why in one community—for example, in eastern Ontario, it may well be in a designated area. Its council may well have passed that bylaw.

A police officer speaks the French language and in another community 10 miles down the road, they do not. Oddly enough, to the people on the street, it makes no sense that you pull out a statute and say they are required to or they have passed a municipal bylaw. The real world does not operate in the way we operate.

Mr. Raymond: I am only responding to you in a very narrow way in the sense that I have stated what the act says. I think the situation you have described is not within the ambit of the limits exercised by Bill 8. Whether that comes about or not at some future point, you may well be right.

Mr. Breaugh: But basically, though, you are not really recommending that the government use its financial strength to say, "Well, you get moneys from Ontario, and therefore, whether you fall under the French Language Services Act or not, or whether you have a municipal bylaw or not, we feel you have an obligation to provide that."

Mr. Raymond: I should say that in the eyes of the French Language Services Commission, there are very critical services that will not be made available because they are not ministry administered.

Mr. Breaugh: Right.

Mr. Raymond: Let me use one example that is dear to me, and that is child care. I think it defeats the purpose, if I may speak on a purely personal note at the present time, to offer French-language education starting at age five or six and not be able to send your child to a day care centre that will reinforce the linguistic environment of the home. That, to me, is a major difficulty and it contributes to the assimilation rate of Franco-Ontarians, which is running at roughly at 34 per cent these days. In given areas outside of northern and eastern Ontario, the assimilation rate is more like 55 per cent and 60 per cent.

So in response to your question, and it is not a very direct question, I recognize, there are those services that in the opinion of the commission and in the eyes of the commission are critically important for the full impact of the act to be felt.

Mr. Breaugh: One of the difficulties I have with the act itself is



that the technique that was used of designating particular areas and designating particular kinds of services is in itself going to create some problems. There is no logic necessarily to the way governments set up and do business in Canada. No one sat down with a master plan and thought this would be a very logical way to do it.

The truth is I would be hard-pressed to come up with a child care facility in Ontario that would fall under the provisions of this act. I am sure there is one. There probably is one within a block or two of this place. But there certainly are not very many of them around. Most of them are operated either privately or by a municipality or perhaps by a school board. There are a few that are under some other agencies that could be construed as government agencies, but not many of them.

The logic escapes me of why you would go to the expense and bother of funding French immersion in the schools, but not provide proper child care facilities in the French language prior to school. I do not think there is any logic there.

Mr. Raymond: It is not within the ambit of the act, but it is a principle that is dear to the members of the commission.

Mr. Breaugh: Let me pursue one other area that may cause a bit of a problem. In the establishment of the commission, there was some discussion of in what way it would be representative of the francophone community in Ontario. I think what we wound up with is something that at least in a formal sense is not representative. We do it by order in council. We try, I am told, to select very fine people who are francophones from around Ontario. There is a bit of regional representation there. But in terms of representing an organization of francophones, they really do not sit on the commission in that capacity, do they?

Mr. Raymond: No. I think members of the commission were appointed on an individual basis based on their qualifications, experience and involvement in the community. I was not around at the time of the earlier appointments, but I would think some consultations with some of the key community groups and provincial associations likely took place prior to a list of names being brought forward to cabinet for appointment by order in council.

You are right in saying that the members of the commission do not represent a particular association on the commission. They were appointed on their own merits.

Mr. Breaugh: Let me pursue this a little bit. If we are considering, for example, extending the life of the commission for some time period or in some different shape or form, one of the things that had occurred to me is that this is kind of an indirect operation here.

If we run into, for example, the provision of French-language services in a particular part of the province where a problem occurs, how do we advise the ministry on what is the best way to solve this problem if we are not really there in a representative sense? I know the commission has not really got into that yet, but I think if you are in business a year from now, you will be involved in this kind of activity where there will be a complaint raised by a community or by a group of people that certain services are not being provided.

You will have to deal not with a five-year plan for a ministry or with

an overall policy recommendation to the government, but you will be faced with a situation where somebody says: "I have a legal right to French-language services here and I am not getting them. How are you going to do it?" In a real sense, you do not represent a group that could say: "Here is my group's position and how you would go about that. We will go back to our organization and consult about what they think is an appropriate level of service or how you might deliver that service."

Can you see where I am going with that? We do not have a representative body that could say—For example, l'Association canadienne-française de l'Ontario says: "This is the level of service we would like to see in communities where there is a big francophone population. This is how you would provide that. This is how you would inform the community that these services are available."

Then we are on fairly sure ground that at least there has been a fairly wide consultative process. Somebody had a big meeting somewhere. They all argued it out. They had a vote and they came up with one position, "This is what we think the government ought to do." Is there any advantage in trying to make the commission, I guess, more representative in nature?

Mr. Raymond: I like to think that the commission, in its present membership, is fairly representative both from the mere geography of the province and from backgrounds, professional training, but there is not a single avenue to input into a process, as you well know, Mr. Breaugh. Some ministries have seen fit—Rémy alluded to this earlier this morning—to convene a forum on health care services in the French language. That took place in November in Sudbury. Rémy alluded to another one in Ottawa a year or so ago that was cosponsored by ACFO—as a matter of fact organized by ACFO, but sponsored by the Ministry of Community and Social Services.

Both of the ministries I have made reference to have established community groups across the province, as it is, for input into the implementation phase of the plan within each ministry. If I were a line deputy, I would look to my French-language services co-ordinator and be somewhat demanding. I think the onus is on every co-ordinator in the given ministry to know the community, to seek out input from the community, to establish a wide network of contacts right across the region, or right across the province for that matter. There are numerous opportunities.

What the future membership of some new body, if there is to be a new body, should be I am not in a position to respond to at this time. We would merely provide advice to the minister and to the government on that subject.

Mr. Breaugh: I appreciate that this would never be an easy exercise at the best of times. What I am a little concerned about here is that in the provision of French-language services around Ontario, we are going to run into a multitude of organizations and groups that do not like what is being proposed. They may not like it in a way that none of us could ever resolve, but it may be a simple, practical matter for their organization. It might be a union. It might be a professional organization. It might be a community group.

They simply look at what the government is trying to do and say: "How could you be so stupid? If you just sat down and talked with us for a little while, we would figure out what designation or how many positions at a job site logically ought to be done in the French language, and how you would actually go about providing that." You might find a way to get out of some very sticky circumstances if we could devise a technique whereby we were not



looking at it in a very broad, mystical, provision-of-services approach to it and were looking at it in a very hard pragmatic way of, how do we do this?

I am not sure we can get there, but I am aware that if we do not try—we could appoint five eminent francophones from all over Ontario with wonderful backgrounds, with a distinguished service record to the people of Ontario. They are going to run up against 150 people in a workplace who are organized in a bargaining unit, either professional or union, who do not like what you are doing. They are going to be off to court and they are going to be doing all kinds of things that are going to make your life very miserable trying to see if there might be a way to solve problems before they become major court cases.

Mr. Beauregard: In the field of health and social services, with the designation of agencies, what we have recommended, besides the establishment of a French-language planning group at the district health council level, is that each institution, hospital, child care service, or whatever type of agency, establish and develop within its own ambit a French-language committee where it will have staff and management, and people from the community and even somebody from the board, so that the provision of services within the institution becomes an endeavour where everybody feels they can have input.

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Actually, I must say that knowing some hospitals in Ontario that have become truly efficient in providing services in both languages—without naming any but having some in mind—I know that those that have been successful are those that really had input from the people who had to do the work and had a local, in-house, French-language committee of staff, doctors, nurses, practitioners, board and community.

The commission has recommended that in the designation of agencies, there should be a link with the community the agency wants to serve. I have always said it was easier to provide French-language services in a situation, even at the ministry level locally, if you involve the people who have provided services in the community you want to serve, than if you just prepare a plan somewhere within that office and send it down. I think a lot of ministries have worked at getting their staff involved.

Mr. Breaugh: One of the reasons I wanted to pursue that a little bit was that, to put it on the record, I am a little concerned about the number of occasions today when you have described the five-year plan, the ministry's plan, the government's plan, the commission's plan.

I have a distinct aversion to great plans. I have never seen one that worked yet. I do not like five-year plans. Pardon me for saying that. I do not think that is particularly the way the world works. I have no objection if you have the grand design of what you would really like to do, and I hope that is what you mean by that, but I do not really think things are going to work out exactly the way any of the ministries have planned them.

I think it is nice they went through that exercise and that probably was useful, but if they really believe they were able to sit down and design what is going to happen for the next five years in their ministry, we should get them a lot of Valium because they are in for a rough five years. It ain't gonna happen that way and they should know that.

Mr. Raymond: In the designation of agencies, it is a mammoth

undertaking. We are talking about thousands and thousands of agencies across the province. Having been the deputy in four or five ministries, I can tell you, as you well know, that every ministry is different. They have their own culture and their own environment and their own interest groups.

We, as a commission, have set out general guidelines, but we do support the involvement of the community and the key players in the delivery of services in the development of the plan.

Now, I know that I, too, would much prefer to see a five-month plan as opposed to a five-year plan, but I think one would merely, in many circumstances, invite problems because there will be community agencies that even with all the goodwill in the world could not provide the service in French because the workforce with the ability to provide the service is simply not available.

We can talk about community health clinics in northern or eastern Ontario, but if you cannot recruit the nurses, you cannot recruit the doctors and you cannot recruit the social workers, you need to phase that in slowly. In that context, I think the five-year plan, which I would prefer to see spread out over a shorter period of time, is not an unreasonable expectation.

Mr. Breaugh: Just a final comment: I think part of the difficulty we are going to have with this is that this act has chosen a technique of implementation, if I may put it that way, that is not going to make things easy; it is going to make things a bit awkward.

In many respects, though, it would perhaps have been difficult to do in political terms. To decide whether or not the province of Ontario was officially bilingual would have been a much cleaner question. To take the route we took of deciding that there are French-language services that can be provided in certain areas or certain kinds of agencies certainly does complicate the problem. It is going to be, I guess, a challenge for the commission, for this assembly and for others to see if we can keep a sense of whether there is a rational provision of services going on here.

Certainly, in what questions members have raised today, I think you are seeing that there is already some apprehension out there. It has not really begun to unravel yet because the full implementation of the act has not really even started yet. But we should all be prepared that we are going to have to face groups of people who do not like this idea at all.

Someone raised the question this morning about—I think the accusation was made that somebody from Quebec conducted an interview with the government of Ontario, and as the question was being asked, I could not help but think, what if you said someone from British Columbia was working for Ontario and actually conducted an interview. Is there a difference? Are we saying that people from the Maritimes cannot be employed by Ontario? I do not think anybody meant anything by that, but I think certainly we start to raise people's hackles when we do that kind of stuff.

We have quite a challenge in front of us. I think the committee will have a bit of a job trying to assess whether or not the commission should continue, and if so, in what form. I understand that you intend to address that at your next meeting.

Mr. Raymond: We will be.



Mr. Breaugh: It would be helpful if we had your comments in that regard before we finalize our report.

Mr. Raymond: We will be introducing the topic at our next meeting, but I am sure it will take more than one meeting to capture the fruitful resolution.

Mr. Breaugh: You mean you do not have a five-year plan for that?

Mr. Raymond: But it will not be a five-year plan.

Mr. Breaugh: Thank you.

Mr. J. B. Nixon: I could not help but observe that many of Mr. Breaugh's questions related to the legislation, Bill 8, the vision it had and how it would be implemented. His questions were not so much in relation to the operations of the commission per se, which is really the purpose of the hearing today. None the less, he raised some interesting questions and I would just like to pursue one area.

Sometimes as I listen, I have this vision of defenceless individuals who are vulnerable and unable to deal with the five-year plans of Bill 8. I have never conceived it that way. I do not conceive it in that way today and I will not conceive it in that way tomorrow.

My understanding, and correct me if I am wrong, is that if an individual employee of the public service is aggrieved with a specific decision as it affects his rights in an employment capacity within a ministry, he has a union and can grieve that situation. If there is an individual who is outside the civil service who is dealing with the government who believes he has a right to a French-language service, and feels he has been denied it unfairly, he could go to the Ombudsman.

Mr. Raymond: And they have a legal recourse under the act.

Mr. J. B. Nixon: They have a legal recourse under the act.

Finally, if there is a group that represents a large number of people or a particular community that disagrees with the policy of Bill 8 or believes it should be amended, changed or whatever, that is what ministers are for. That is what ministers of the crown do every day. They meet with individuals and groups who are aggrieved with government policy, government legislation, and ask for changes. Clearly, the existence or nonexistence of the commission does not preclude anyone from going to a minister of the crown and saying, "Listen, I think you should be doing X and Y."

Mr. Raymond: That is what I was attempting to say earlier and you have said it so much better than I.

Mr. Villeneuve: On your way to cabinet.

Mr. Breaugh: He is still only an intermediate.

Mr. Chairman: Do you have any further questions, Mr. Nixon?

Mr. J. B. Nixon: No, I do not.

Mr. Chairman: I have a couple. Will you surpass the budget that is in place for you for this year or will you keep within your budget, and what is that budget?

Mr. Raymond: The budget, sir, if I may just find the appropriate tab here—

Mr. Chairman: The other question I have, while you are looking for that, is how many staff do you have at the commission?

Mr. Raymond: The total complement of the commission, including myself, is six. I serve as a full-time member of the commission and as the chief executive officer within the office of the commission. We have an office administrator, two secretaries, myself—that is four. It would be a total of seven; I am mistaken, obviously, and was excluding myself. There is the executive assistant-policy analyst—that is a position that combines the two functions—and two policy analysts.

Mr. Chairman: How many would be here with you today?

Mr. Raymond: There would be one with me today. That is Mary Shenstone from the office.

Mr. Chairman: And the budget is?

Mr. Raymond: The budget for 1988-89 is \$666,000. We expect we will be well within budget on every count this year.

Mr. Chairman: I am curious. In the last while, in your deliberations and with regard to the work you do on this commission, has Bill 178 in Quebec had any hampering effect with regard to the work you have been doing here in Ontario?

Mr. Raymond: I have taken the view that we, the members of the commission, are charged with the responsibility of overseeing the implementation of Bill 8 and I have made it a point of not letting events external to the activities of the commission influence what we do.

Mr. Chairman: It is interesting to note—it has just been brought to my attention—that the number of people you are going to designate, 5,766, is approximately 6.5 per cent, with regard to what the population is in the province, being right on target more or less.

I want to thank you for appearing before this committee. We appreciate it very much. We will be deliberating tomorrow in camera in room 228, as a committee only. We appreciate your input and thank you for coming.

Mr. Raymond: Thank you, sir. If we be of further assistance, please call on us.

The committee adjourned at 3:12 p.m.









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